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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

v.

APPLE INC.,

Defendant, Counterclaimant.

CASE No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF MARK A. PERRY IN
SUPPORT OF DEFENDANT APPLE INC.'S
MOTION FOR AN ADVERSE
CREDIBILITY FINDING**

The Honorable Yvonne Gonzalez Rogers

1 I hereby declare as follows:

2 1. I am an attorney licensed to practice in the State of California, and a member of the Bar
3 of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for
4 Defendant Apple Inc. (“Apple”) in this case. I submit this declaration in support of Apple’s motion
5 for an adverse credibility finding.

6 2. Apple deposed Lori Wright on April 16, 2021. Attached hereto as **Exhibit A** is a true
7 and correct copy of excerpts of the transcript of Ms. Wright’s April 16, 2021 deposition testimony.

8 3. At no point after April 12, 2021 has Microsoft produced any additional documents in
9 response to Apple’s subpoena.

10 4. Apple did not have an opportunity to review the Xbox profit and loss (“P&L”) statement
11 discussed in Ms. Wright’s deposition, let alone prepare an effective cross-examination about its
12 contents. Nor has Apple had the opportunity to review any documents allegedly supporting
13 Ms. Wright’s testimony that the iPhone does not compete with Xbox.

14 5. Attached hereto as **Exhibit B** is a true and correct copy of excerpts of the transcript of
15 Ms. Wright’s May 5, 2021 trial testimony.

16
17 I declare under penalty of perjury under the laws of the United States that the foregoing is true
18 and correct and that this Declaration was executed on May 6, 2021 at Oakland, California.

19
20 /s/ Mark A. Perry

21 Mark A. Perry
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EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,
Plaintiff,
Counter-defendant,

vs.

Case No. 4:20-cv-05640
YGR

APPLE INC.,

Defendant,
Counterclaimant.

IN RE APPLE IPHONE
ANTITRUST LITIGATION

Case No. 4:11-cv-06714
YGR

(caption cont'd)

HIGHLY CONFIDENTIAL OUTSIDE ATTORNEYS' EYES ONLY
ZOOM DEPOSITION OF LORI WRIGHT
(Reported Remotely via Video & Web Videoconference)
Palo Alto, California (Deponent's location)
Friday, April 16, 2021
Volume I

JOB NO. 4544487
PAGES 1 - 290

1 DONALD R. CAMERON, et al.,

2 Plaintiffs,

3 vs.

Case No. 4:19-cv-03074

YGR

4 APPLE INC.,

5 Defendant.

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10 *HIGHLY CONFIDENTIAL OUTSIDE ATTORNEYS' EYES ONLY*

11 ZOOM DEPOSITION OF LORI WRIGHT

12 (Reported Remotely via Video & Web Videoconference)

13 Palo Alto, California (Deponent's location)

14 Friday, April 16, 2021

15 Volume I

16
17
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19
20
STENOGRAPHICALLY REPORTED BY:

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California CSR No. 12546

22 Nevada CCR No. 827

Oregon CSR No. 20-0466

23 Washington CCR No. 3491

24 JOB NO. 4544487

25

1 A. I am. 09:17:31

2 Q. I'm sorry?

3 A. I am.

4 Q. What did you do today to prepare for your
5 deposition? 09:17:37

6 A. I spoke with my attorneys a couple of
7 times over the course of the last week, and I had a
8 good night's sleep.

9 Q. Great way to prepare for a deposition.

10 How many -- who did -- who were your 09:17:52
11 attorneys that you spoke to a couple of times in
12 the course of last week?

13 A. The attorneys here present on this call.

14 Q. Can you name them?

15 A. I can name David, who -- 09:18:02
16 David Chiappetta, who's beside me.
17 Jonathan Kanter. Tiffany Lee. Who am I
18 forgetting. On the Microsoft side, we have
19 Brien Jacobsen. We have our Xbox counsel,
20 Linda Norman, Leigh Ann Lucero, who is not -- 09:18:23
21 neither of them are on this call, but they are
22 internal Microsoft legal representations. And --
23 who am I missing -- Shyla.

24 Those are the ones that I can remember.

25 Q. How -- how long were the two calls, 09:18:45

1 approximately? 09:18:47

2 A. Yesterday was about a half a day, a

3 little over. And earlier in the week were three

4 hours or so.

5 Q. Okay. Your -- your attorney representing 09:18:59

6 you today is who?

7 A. David from Perkins Coie.

8 Q. Okay. Is he rep- -- do you understand

9 him to be representing you and Microsoft or just

10 you? 09:19:22

11 A. We have actually not discussed this in

12 any detail.

13 Q. Okay. Who's paying his fees for today?

14 A. I don't know.

15 Q. You don't know? Okay. 09:19:31

16 Do you know if Epic is paying fees?

17 A. I do not. I have no knowledge of who's

18 paying whom anything.

19 Q. Were -- during your preparation, was

20 anybody, other than Microsoft lawyers and Microsoft 09:19:41

21 employees, in- -- involved in your preparation for

22 your deposition?

23 A. None that I recall.

24 Q. None that you recall.

25 Was Epic -- any Epic folks involved in 09:19:58

1 here today? 09:52:34

2 A. I am not.

3 Q. Is this a workday, or did you take

4 vacation time for this?

5 A. This a workday. 09:52:41

6 Q. Okay. So Microsoft is paying you today

7 like they would pay you yesterday or the day before

8 or -- or next week, right?

9 A. Yes, because I have been subpoenaed to be

10 here, and I'm not working on other partner-related 09:52:55

11 matters because I'm here today.

12 Q. Okay. Have you searched your own

13 custodial documents in connection with this

14 litigation?

15 A. Correct. 09:53:10

16 Q. You have?

17 A. Yes, I have.

18 Q. Okay. And -- and did you provide those

19 documents with -- don't tell me what they are, but

20 did you provide the documents to your attorneys? 09:53:17

21 A. No.

22 Q. Okay. And -- and the reason you searched

23 them, then, was for what reason?

24 A. Because it has been a while since our

25 activity was in full motion to work -- to attempt 09:53:34

1 to work with Apple to get xCloud into the store, 09:53:43
2 and I have had a lot of things happen since then,
3 and I needed to go back and look at the timelines.

4 Q. Refresh your recollection on -- on the
5 events as it related to the xCloud? 09:53:56

6 A. Correct.

7 Q. Do you have any -- I assume that's
8 because you anticipate testifying as to xCloud?

9 MR. CHIAPPETTA: Objection.

10 You mean today, or at trial? 09:54:08

11 MR. CALANDRA: At trial.

12 THE DEPONENT: No. I did not look at
13 them for trial. I looked at them for today.

14 Q (By Mr. Calandra) Okay. You anticipated
15 I would ask you about the xCloud today? 09:54:16

16 A. Correct.

17 Q. Okay. You have any idea what the topics
18 of your trial testimony might be?

19 A. I do not, other than xCloud.

20 (Exhibit 616 was marked for 09:54:35
21 identification by the court reporter and is
22 attached hereto.)

23 MR. CALANDRA: Okay. So I'm going to ask
24 and mark as Defendants' Exhibit 616 -- this is
25 Tab 1, Lizzy. This is a -- a document that was 09:54:43

1 you, within your job category, would be capable of 10:06:26
2 testifying to?

3 MR. CHIAPPETTA: Objection. Vague.

4 THE DEPONENT: I would need more
5 specifics on exactly which aspects. 10:06:36

6 Q. (By Mr. Calandra) Okay. Does -- do
7 you -- do you have any documents -- company
8 documents or emails in your files that relate to
9 the issue of Xbox video game console business and
10 operations? 10:06:51

11 MR. CHIAPPETTA: Objection. Vague.

12 THE DEPONENT: I am certain that I have
13 documents that relate to the console business
14 simply because it's something I'm generally updated
15 on but am not directly responsible for. 10:07:13

16 Q. (By Mr. Calandra) I understand.

17 Did you review those documents in
18 preparation for this deposition?

19 A. I did not.

20 Q. Okay. Do you intend to review them 10:07:23
21 before trial?

22 A. I don't know what I intend to review
23 before trial at this point.

24 Q. Okay. The third topic, if you look back
25 on the exhibit, is "Xbox cloud gaming, including 10:07:34

1 xCloud and Game Pass," and we have been talking 10:07:37
2 about that a little bit.
3 You -- you -- you do intend to testify at
4 trial -- or you believe you are going to testify on
5 that issue? 10:07:46
6 A. Again, I have no understanding or clarity
7 at this point on what I'm testifying about at
8 trial.
9 Q. All right. What level of knowledge do
10 you have about the technical aspects of Xbox cloud 10:07:58
11 gaming?
12 MR. CHIAPPETTA: Objection. Vague.
13 THE DEPONENT: Can you be more specific
14 on which technical aspects?
15 Q. (By Mr. Calandra) Well, I know you are a 10:08:10
16 business development person, but are -- are you,
17 like, a techie?
18 MR. CHIAPPETTA: Objection. Vague.
19 THE DEPONENT: I don't know how to answer
20 that question. 10:08:20
21 Q. (By Mr. Calandra) You ever do
22 programming?
23 A. No.
24 Q. Do you have any formal training on --
25 on -- on -- on any of the programming language that 10:08:26

1 is used for the xCloud? 10:08:30

2 A. No.

3 Q. Okay. Do you have any company documents
4 or emails that relate to the xCloud?

5 A. Yes. 10:08:40

6 Q. You have a lot of them, don't you?

7 A. Yes.

8 Q. Okay. And some of them you reviewed in
9 connection with this deposition, correct?

10 A. I reviewed my own emails on the topic, 10:08:49
11 yes, that Apple also has, because all of them were
12 sent to Apple.

13 Q. Well, you also have internal emails on
14 the xCloud, correct?

15 A. Yes. 10:09:02

16 Q. Okay. You have a fair amount of internal
17 emails with regard to xCloud, I assume, right?

18 A. I don't know what a "fair amount" is.

19 Q. More than two dozen.

20 A. I don't know. 10:09:14

21 Q. You don't know.

22 Did you review any internal emails with
23 regard to xCloud in preparation for this
24 deposition?

25 A. Did I review -- I'm sorry, repeat it one 10:09:25

1 look at the Epic Store as a place where Epic is 10:56:22
2 building up a place for their games to have
3 transactions in a storefront, and it's not -- it's
4 just not part of my thinking on who's competing in
5 which storefront. 10:56:44

6 Q. Okay. What about the Apple App Store; do
7 you -- do you consider that a competitor of the
8 Microsoft X store -- or the Microsoft Store for
9 Xbox?

10 MR. CHIAPPETTA: Objection. Assumes 10:56:58
11 facts not in the evidence.

12 THE DEPONENT: I do not.

13 Q. (By Mr. Calandra) Why not?

14 A. Because I think about it as an
15 alternative place where you purchase a subset of 10:57:13
16 our games for mobile, but it is not a place where
17 we meaningfully compete for transactions.

18 Q. Do you compete at all, leaving aside the
19 extent to which you compete?

20 MR. CHIAPPETTA: Objection. Foundation. 10:57:30
21 Vague.

22 THE DEPONENT: In -- in any -- none of
23 the conversations that I am in do we look at the
24 Apple App Store as a competing store.

25 Q. (By Mr. Calandra) All right. But your 10:57:46

1 testimony, as I understand it, is -- with respect 10:57:47
2 to the Microsoft Store for Xbox, that you are not
3 aware of who its competitors are?

4 MR. CHIAPPETTA: Objection. Vague.
5 Misstates testimony. 10:57:57

6 THE DEPONENT: That -- I -- what my
7 statement is, is that we don't look at the
8 storefronts, at this point, as competing
9 storefronts. We look at these storefronts as
10 places that you can become to -- you can use our 10:58:13
11 software, acquire our software, become a
12 subscriber, become an Xbox member. We don't think
13 about it in -- leading with the competing
14 storefront.

15 Q. (By Mr. Calandra) But doesn't the Xbox 10:58:29
16 store for -- the Xbox store seek to attract
17 developers to its store, say, perhaps, instead of
18 them selling on another store?

19 MR. CHIAPPETTA: Objection. Vague.
20 Foundation. 10:58:45

21 THE DEPONENT: Our focus is to grow our
22 Game Pass and Xbox community and sell game titles
23 regardless of what store they are in.

24 Q. (By Mr. Calandra) Yeah, but when you
25 sell a game title on your -- your Microsoft Store 10:59:02

1 for Xbox, you make a commission, right? 10:59:04

2 A. Which title?

3 Q. Well, let's take Fortnite.

4 When -- when FNBR is sold on the

5 Microsoft Store for Xbox, Microsoft makes a 10:59:15

6 commission, right?

7 A. Correct.

8 MR. CHIAPPETTA: Same objections.

9 Q. (By Mr. Calandra) Okay. And, obviously,

10 we know that Fortnite is no longer on iOS, but 10:59:21

11 before it was taken off of iOS, if somebody

12 downloaded Fortnite, which is on iOS, Microsoft

13 makes no commission, right?

14 A. Correct.

15 Q. Okay. So I would assume Microsoft would 10:59:37

16 prefer that the download occur on its store?

17 MR. CHIAPPETTA: Objection. Vague.

18 THE DEPONENT: I don't know that we have

19 a preference.

20 MR. EARNHARDT: Counsel, I think you're 11:00:14

21 frozen.

22 (Technical difficulties;

23 Discussion off the stenographic record.)

24 MR. EARNHARDT: You may be back with us,

25 but you froze for about 20 seconds. 11:00:16

1 MR. CALANDRA: Okay. 11:00:18

2 MR. EARNHARDT: Did you say something,

3 John?

4 MR. CALANDRA: Yeah, I didn't hear the

5 answer to the question. 11:00:21

6 MR. CHIAPPETTA: I don't think we heard

7 the question.

8 MR. EARNHARDT: I'm not sure -- I'm not

9 sure we heard the question.

10 MR. CALANDRA: All right. Why don't you 11:00:26

11 read me back, Rebecca, please, the last question

12 that you actually caught.

13 (Record read as follows:

14 "QUESTION: So I would assume

15 Microsoft would prefer that the 10:59:39

16 download occur on its store?

17 "Objection. Vague.

18 "ANSWER: I don't know that we have a

19 preference.")

20 Q. (By Mr. Calandra) Okay. But you'll 11:00:54

21 agree with me that regardless of whether you have a

22 preference, if the download occurs on the iOS

23 platform, Microsoft makes zero. If it occurs on

24 the Microsoft Store, Microsoft makes money?

25 MR. CHIAPPETTA: Objection. Vague as to 11:01:06

Page 95

1 "the download." 11:01:07

2 Q. (By Mr. Calandra) And my example was
3 Fortnite.

4 MR. CHIAPPETTA: Same objection.

5 THE DEPONENT: We don't view them as 11:01:19

6 mutually exclusive, in many cases. We hope that

7 customers will play Xbox on consoles and get

8 Fortnite from Microsoft in order to play on the

9 Xbox console. We don't have a preference on

10 whether they also go and get Fortnite on mobile 11:01:39

11 when they could.

12 And, like, it feels that -- from my

13 perspective, that, yes, we want people to play

14 Fortnite on consoles, and we are working hard to

15 attract people to play on our platform, on our 11:02:02

16 console, and believe that they will have the best

17 experience in doing that when it comes to consoles.

18 So we hope they will play it on our console instead

19 of Sony.

20 Q. (By Mr. Calandra) Okay. So you are 11:02:18

21 competing with Sony's console platform to try to

22 get players to play it on your -- your platform,

23 correct?

24 A. Correct.

25 Q. But you are saying that you are not 11:02:27

1 competing to try to get players to play on your 11:02:29
2 platform instead of or in lieu of a mobile
3 operating system platform like Android or iOS?

4 A. That's correct.

5 Q. And why is it that you don't -- why is it 11:02:40
6 that you are agnostic in the case of a mobile
7 platform; whereas, you are not agnostic in the case
8 of, say, Sony's platform?

9 A. Because if you are choosing Sony's
10 platform, you are probably playing it on Sony and 11:02:59
11 not and Xbox. If you are playing it on Xbox, you
12 are probably playing it on the Xbox plus mobile.

13 Q. Okay. So the -- the people who play
14 on -- on, say, iOS's platform, on the App Store,
15 are -- are, in your mind, likely to also be playing 11:03:21
16 on a console platform that might well be Sony; it
17 might be well Xbox?

18 A. Correct.

19 Q. Okay. Do you have a sense of whether
20 they're more inclined to be playing on a console 11:03:33
21 platform, or are -- are they more inclined to be
22 playing on their mobile platform?

23 MR. CHIAPPETTA: Objection. Vague.

24 THE DEPONENT: I don't have an
25 inclination. 11:03:47

1 Q. (By Mr. Calandra) Do most game players 11:03:48
2 play on a console platforms, or do most game
3 players play on mobile platforms?

4 MR. CHIAPPETTA: Objection. Vague and
5 compound. 11:04:00

6 MR. EARNHARDT: Object to the form.

7 THE DEPONENT: I don't think I can speak
8 for what "most players" means.

9 MR. CALANDRA: It means the majority.

10 MR. CHIAPPETTA: Same objections. 11:04:16

11 MR. EARNHARDT: Foundation.

12 MR. CHIAPPETTA: Object to the form.

13 THE DEPONENT: The data that we have on
14 players suggestion that they play on consoles plus
15 mobile and, many times, plus PC. 11:04:34

16 Q. (By Mr. Calandra) Okay. All three
17 platforms they play on; is that -- that's the data
18 you have?

19 A. That is the data that we have.

20 Q. Okay. Does Microsoft have any exclusive 11:04:44
21 agreements with developers for exclusive game
22 content?

23 MR. CHIAPPETTA: Objection. Foundation.

24 THE DEPONENT: Can you repeat the
25 question. 11:05:00

1 on every console. We are subsidizing the consoles 11:52:26
2 for the sake of the content revenue, and in order
3 for the economics to work for us to have a
4 profitable business, we, at this point, have not
5 opened it up to other stores because we've needed 11:52:50
6 to build this special purpose device and be able to
7 afford subsidizing the hardware.

8 Q. (By Mr. Calandra) Just so I clarify the
9 testimony, you began with "I don't know why that is
10 specifically. I believe that it could be for the 11:53:05
11 fact..."

12 So is that speculation on your part?

13 A. It is speculation on my part. It is
14 speculation based off of my understanding of
15 business and what -- if I'm looking at a P&L and 11:53:17
16 economics on it, what I would believe.

17 Q. Does -- does Xbox have a separate P&L for
18 Xbox itself, just the Xbox, you know, sort of
19 platform?

20 MR. CHIAPPETTA: Objection. Foundation. 11:53:33

21 THE DEPONENT: Yes, we do.

22 Q. (By Mr. Calandra) Okay. And -- and
23 you've seen that, correct?

24 A. Correct.

25 Q. Okay. And -- and are those documents 11:53:41

1 that would be in your emails? 11:53:44

2 A. Yes.

3 Q. Okay. What is -- what is -- in -- in
4 connection with the Xbox profit and loss statement,
5 does it include console sales plus subscriptions 11:54:01
6 and -- and commissions -- and commissions?

7 A. Yes, it does.

8 Q. And does it lump them together, or does
9 it make them out separately?

10 A. I don't recall whether commissions are 11:54:14
11 broken out separately.

12 Q. Okay. But the -- the actual profit and
13 loss statement groups all of those things -- the
14 consoles, the hardware, the -- the subscriptions,
15 all the revenue sources -- together in one P&L 11:54:25
16 statement; am I right?

17 MR. CHIAPPETTA: Objection. Vague.
18 Compound.

19 THE DEPONENT: It has the components you
20 would expect on a P&L statement. 11:54:38

21 Q. (By Mr. Calandra) Well, I want to be
22 clear that we expect the same components on the
23 statement.

24 So the -- the P&L statement of Xbox would
25 include the revenues from the -- the 11:54:48

Page 124

1 meeting. I -- I don't personally remember taking 02:44:13
2 notes during the meeting.

3 Q. And -- and, to your knowledge, did any of
4 your colleagues at Microsoft take notes during the
5 meeting? 02:44:26

6 A. There is -- there's -- I believe the
7 business development manager on my team took notes
8 in the first meeting. I vaguely remember a recap.
9 The second meeting I don't remember any notes or
10 anyone taking notes. 02:44:54

11 Q. And who was the business development
12 manager who took the notes during the first
13 meeting?

14 A. His name is Rob Simister.

15 Q. Rob Simister? 02:45:02

16 A. Uh-huh.

17 Q. Okay. Have you ever seen Rob's notes --
18 Rob Simister's notes?

19 A. I vaguely recall a meeting recap he may
20 have sent after the meeting, summarizing his 02:45:14
21 interpretation of what he heard.

22 Q. So he emailed after the meeting to you a
23 summary of what he heard at the meeting?

24 A. That's my recollection.

25 Q. Okay. Do you know if that document was 02:45:27

Page 210

1 profitable. I believe that the business becomes 04:00:31
2 profitable by subsidizing the console over a period
3 of time.

4 Q. No. I -- I understand the point. You
5 are saying, well, when you look at the console in 04:00:42
6 isolation, it's not profitable. But when you look
7 at the business, the subscriptions, the revenues
8 generated from it, the business overall becomes
9 profitable over time.

10 That's your point -- 04:00:52

11 A. Correct.

12 Q. -- right?

13 A. We pay for the hardware in order to
14 provide the content and make money on the content.

15 Q. Sort of the console is the means to the 04:01:05
16 end -- right? -- because with the console, people
17 get the content. With the content, you make money.
18 Overall, it's a profitable business model?

19 A. Correct.

20 Q. Okay. Now -- but just so I am clear, 04:01:15
21 is -- is your -- your -- what is the source of your
22 information or knowledge about the profitability of
23 the business segment that is Xbox?

24 A. I am aware that Xbox is a profitable
25 business. 04:01:36

1 Q. Okay. And that's from reading documents? 04:01:36

2 A. Correct.

3 Q. Okay. And these would be documents that

4 come to you in the ordinary course of business?

5 A. That's accurate, yes. I read documents 04:01:50

6 and understand, through day to day, the

7 profitability of the business, yes.

8 Q. Okay. None of those documents have been

9 produced in this case, to your knowledge, have --

10 have they? 04:02:05

11 MR. CHIAPPETTA: Calls for speculation.

12 THE DEPONENT: I am --

13 MR. EARNHARDT: Object to the form. That

14 misstates the record.

15 THE DEPONENT: I am not aware of what's 04:02:11

16 been produced in this case.

17 Q. (By Mr. Calandra) Okay. Are you aware

18 of the Coalition of App Fairness? Do you know what

19 that is?

20 A. I do not. 04:02:31

21 Q. You never heard of it?

22 A. No.

23 Q. Going back to Dr. Susan Athey, I asked

24 about her before. You said -- I believe you said

25 you did not know her. 04:02:45

Page 259

1 Am I -- am I -- is my understanding 04:02:46
2 correct?
3 A. That is correct.
4 Q. And am I correct you've never heard --
5 A. Will you repeat her name? 04:02:53
6 Q. Well, I will get the exact spelling just
7 to make sure I didn't butcher the name. Hold on.
8 Dr. Susan Athey, A-T-H-E-Y.
9 A. Will you spell it more time? I'm sorry.
10 Q. A -- A-T-H-E-Y. Susan -- 04:03:13
11 Dr. Susan Athey, A-T-H-E-Y.
12 A. I am not aware of her, no.
13 Q. You never heard -- you don't know who she
14 is? If she was standing in front of you, you
15 wouldn't know? 04:03:24
16 A. I -- that is accurate.
17 Q. Okay. And said you are not aware of
18 the -- you never heard of the Coalition for App
19 Fairness?
20 A. I have not. 04:03:34
21 Q. Okay. You did look at a document before
22 that had the -- the -- the Microsoft principles
23 that it was adopting based upon the Coalition of
24 App Fairness.
25 Do you remember that? 04:03:44

Page 260

1 A. The one that I saw for the first time 04:03:47

2 today? Yes.

3 Q. Okay. So you hadn't -- okay. That's

4 fine.

5 THE COURT REPORTER: Hold on. Hold on. 04:03:53

6 Hold on.

7 (Technical issues;

8 Discussion off the stenographic record.)

9 Q. (By Mr. Calandra) Fair enough to say you

10 haven't seen any communications with the Coalition 04:04:26

11 for App Fairness, I assume, right?

12 A. That's accurate.

13 Q. Okay. Now, do you -- do you have --

14 maybe -- maybe you've answered this, but do you

15 have any communications in your files relating to 04:04:41

16 Epic?

17 A. That's broad. I don't -- maybe.

18 Q. And -- and why would you -- why would you

19 have any communications in your files relating to

20 Epic? 04:04:59

21 MR. CHIAPPETTA: Calls for speculation.

22 THE DEPONENT: I'm in the gaming

23 organization. I'm a member of the gaming

24 leadership team. Emails get sent. I don't know.

25 Perhaps there's emails there. I don't know. 04:05:19

Page 261

EXHIBIT B

VOLUME 3

Pages 487 - 777

UNDER SEAL PAGES - 586 - 588

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

EPIC GAMES, INC.,)	
)	
Plaintiff,)	NO. C-20-5640 YGR
)	
vs.)	Wednesday, May 5, 2021
)	
APPLE, INC.,)	Oakland, California
)	
Defendant.)	BENCH TRIAL
)	
APPLE, INC.,)	
)	
Counterclaimant,)	
vs.)	
)	
EPIC GAMES, Inc.,)	
)	
Counter-Defendant.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:	CRAVATH, SWAINE & MOORE, LLP
	825 Eighth Avenue
	New York, New York 10019
BY:	KATHERINE B. FORREST, ESQUIRE
	GARY A. BORNSTEIN, ESQUIRE
	YONATAN EVEN, ESQUIRE

(Appearances continued.)

Reported By:	Diane E. Skillman, CSR 4909, RPR, FCRR
	Official Court Reporter

09:04:30 1 **A.** It was not.

09:04:32 2 **Q.** At a very high level -- we will get into the details
09:04:35 3 later -- but why not?

09:04:36 4 **A.** There were multiple policies that were in place in the App
09:04:40 5 Store that prevented game streaming from being possible to
09:04:46 6 deliver through the App Store. We were able to work through
09:04:50 7 some of the policy issues, and so all the policies changed,
09:04:55 8 but the broadest issue we were not able to resolve.

09:04:58 9 **Q.** We'll come back to that later, but first let's just cover
09:05:01 10 from basics about Xbox.

09:05:03 11 So, first of all, what is an Xbox?

09:05:06 12 **A.** Well, Xbox in its broadest sense is our products and
09:05:10 13 services for gaming. If you refer to Xbox as a piece of
09:05:16 14 hardware, that console is a box that delivers a gaming
09:05:20 15 experience to a community.

09:05:23 16 **Q.** Okay. Is that an Xbox console?

09:05:26 17 **A.** Yes. That's our series X.

09:05:28 18 **Q.** What is the Xbox console marketed to consumers as being?

09:05:35 19 **A.** A gaming experience.

09:05:37 20 **Q.** Is the Xbox console designed to optimize any particular
09:05:42 21 functionality?

09:05:44 22 **A.** It is designed to optimize the game experience.

09:05:49 23 **Q.** Can A user take a picture on an Xbox console?

09:05:53 24 **A.** No.

09:05:54 25 **Q.** Could a user order an Uber through the Uber application on

an Xbox console?

A. No.

Q. Could you get driving directions while you were driving on

an Xbox console?

A. No.

Q. Can you do anything at all with an Xbox console if it's

not plugged into a power outlet?

A. No.

Q. If a user only owned an Xbox and not a smartphone, could

the user do any of the things I just asked you about: Take a

picture, order an Uber, get driving directions?

A. They could not.

Q. To be clear, does the Xbox console have a battery?

A. No.

Q. Does it have a screen?

A. No.

Q. How do you see the games?

A. You have to plug it into a monitor or a PC, some display

screen.

Q. Does the Xbox have speakers?

A. It does not.

Q. How do you hear the games?

A. Through the display device or auxiliary sound.

Q. Does the Xbox have touchscreen functionality to control

the games?

09:07:07 1 **A.** The Xbox console does not have touch controls.

09:07:10 2 **Q.** How do you control the games?

09:07:11 3 **A.** Through a controller.

09:07:14 4 **Q.** Can the Xbox console connect to the internet?

09:07:17 5 **A.** Yes.

09:07:18 6 **Q.** How?

09:07:19 7 **A.** Over ethernet or WiFi.

09:07:22 8 **Q.** Does it have a cellular chip?

09:07:24 9 **A.** It does not.

09:07:25 10 **Q.** Would it be possible for a user to play the Xbox console

09:07:29 11 without owning other equipment such as a TV, speakers,

09:07:33 12 ethernet connection?

09:07:35 13 **A.** No.

09:07:39 14 **Q.** What products, if any, compete with the Xbox console for

09:07:45 15 hardware sales?

09:07:46 16 **A.** The most direct competitor for hardware sales would be the

09:07:50 17 Sony PlayStation.

09:07:52 18 **Q.** Are there any others?

09:07:53 19 **A.** There is the Nintendo Switch but to a much lesser extent.

09:07:57 20 **Q.** Any others?

09:07:57 21 **A.** No.

09:07:58 22 **Q.** Okay. What about the iPhone?

09:08:01 23 **A.** The iPhone as a competition?

09:08:04 24 **Q.** Yes.

09:08:04 25 **A.** We certainly don't view iPhone as a competing device.

09:08:08 1 **Q.** What about the iPad?

09:08:09 2 **A.** We do not view the iPad as a competing device.

09:08:12 3 **Q.** In your role in business development at Xbox, do you try
09:08:16 4 to convince users to buy an Xbox console rather than an
09:08:22 5 iPhone?

09:08:22 6 **A.** No.

09:08:25 7 **Q.** Why not?

09:08:28 8 **A.** Because we view the opportunity for gamers to -- they make
09:08:35 9 a choice to have the game experience with a console or they
09:08:38 10 play on a PC. Sometimes that's an "and." And they also want
09:08:44 11 to play on mobile devices. So they are additives. They are
09:08:49 12 not replacements.

09:08:49 13 **Q.** That was going to be my next question. Do you view the
09:08:52 14 Xbox console as a replacement or substitute for the iPhone?

09:08:55 15 **A.** No. I'm not aware of.

09:08:57 16 **Q.** Do you view the Xbox console as a replacement or
09:09:00 17 substitute for the iPad?

09:09:02 18 **A.** No.

09:09:04 19 **Q.** Based on your experience, do Xbox users also have
09:09:11 20 smartphones?

09:09:12 21 **A.** Yes.

09:09:16 22 **Q.** So let's talk about the games available to play on Xbox.

09:09:20 23 First of all, does a video game have to be programmed
09:09:24 24 specifically for the Xbox for the Xbox console to be able to
09:09:29 25 run it?

09:09:30 1 **A.** Yes.

09:09:30 2 **Q.** And is there -- do you have a name for the type of games
09:09:34 3 that are typically developed for Xbox consoles?

09:09:39 4 **A.** In its broadest sense, there are AAA games which are kind
09:09:43 5 of major blockbuster titles that get built for the Xbox or
09:09:48 6 individual developers who build games to be played. You know,
09:09:53 7 we typically refer to them just as console games.

09:09:57 8 **Q.** And can you -- well, can you compare AAA or console games
09:10:04 9 to games that are available and written for mobile devices?

09:10:08 10 **A.** For the most part, no. Mobile device games are typically
09:10:12 11 more casual. They're -- the vast majority are free to play
09:10:16 12 and then have in-app purchase mechanisms as part of them. So
09:10:21 13 there are certainly exceptions where a game can be played -- a
09:10:25 14 different version of the game but the same title can be played
09:10:27 15 on mobile and console. But, no, it is -- as a majority rule,
09:10:32 16 no.

09:10:33 17 **Q.** Can you just describe the characteristics of what you call
09:10:35 18 AAA games or console quality games?

09:10:40 19 **A.** These are games that, you know, have been -- the
09:10:43 20 developers have taken a design choice to build an experience
09:10:49 21 that they want to have rendered on, you know -- with all the
09:10:53 22 compute power, graphic fidelity, that this box provides. And
09:10:57 23 so there are a lot of immersive games, you know, very, you
09:11:02 24 know, thoughtful, long storyline games that are traditionally
09:11:04 25 the type of games that we have on console.

09:11:08 1 **Q.** And relative to games that are designed for iOS, how do
09:11:13 2 those games compare in terms of the computing power required
09:11:17 3 to run them?

09:11:19 4 **A.** They're just much, much larger size games. Like, you
09:11:23 5 know, 150 gig, 250, 450 gigabyte games. These are massive
09:11:30 6 game size files that run on the console. And so they take a
09:11:35 7 lot of graphics intensity and all sorts of other technical
09:11:40 8 requirements in order to render that experience on a console,
09:11:44 9 and you can't just move that over to an iPhone.

09:11:48 10 **Q.** Just to level set for -- to make one thing clear, can
09:11:53 11 games that are specifically written to run on the Xbox console
09:11:59 12 run on the iOS operating system?

09:12:03 13 **A.** The vast majority of those games cannot be run on the
09:12:08 14 iPhone natively. They cannot be downloaded onto the iPhone.
09:12:14 15 What I imagine we'll talk about later is there is an ability
09:12:18 16 to stream those games to an iPhone.

09:12:21 17 **Q.** We will get into that later, and my question really is, if
09:12:23 18 a game is coded to run on the Xbox console, can that code
09:12:27 19 unchanged be imported to iOS and run?

09:12:30 20 **A.** No. You have to rewrite the game.

09:12:32 21 **Q.** And are there some games that by the very nature of there
09:12:37 22 size and complexity cannot be even recoded to run on mobile
09:12:42 23 once they've been designed for Xbox?

09:12:45 24 **A.** Yes.

09:12:48 25 **Q.** Can you give me -- can you give me an example?

09:12:52 1 A. Halo.

09:12:53 2 Q. What is Halo?

09:12:56 3 A. Halo is a game that is developed by our -- by Microsoft

09:13:00 4 Studios, and it is a game that cannot run -- that has been

09:13:08 5 built for the console. A large game. It could not run on

09:13:12 6 mobile.

09:13:14 7 Q. Approximately how many gigabytes are required to download
09:13:20 8 the game Halo?

09:13:22 9 A. I haven't looked. I think it's some -- if I remember, I

09:13:25 10 think it's about 150 gigabytes.

09:13:28 11 Q. And what is the typical download size supported by an iOS
09:13:32 12 device?

09:13:35 13 A. I think the biggest games are in the 3-to-4 gigabyte range
09:13:41 14 with an average of 35, 45 meg, if I remember correctly.

09:13:46 15 Q. So roughly Halo is 50 times too large to run on iOS?

09:13:53 16 A. Yeah.

09:13:55 17 Q. Are there other examples like Halo that are too big or too
09:14:01 18 intensive to run natively on iOS?

09:14:04 19 A. A lot of -- many, many of our titles would either consume
09:14:08 20 the entire storage capacity or not run at all on those, so,
09:14:13 21 you know, we have a long list of titles.

09:14:15 22 Q. Okay. Looking at it from the other direction, are there
09:14:18 23 games available on iOS that are not available to play on the
09:14:23 24 Xbox console?

09:14:24 25 A. Sure.

09:14:25 1 **Q.** And what types of games are those?

09:14:28 2 **A.** They're typically casual games that have been written for
09:14:31 3 mobile or someone has taken a choice to write a core mobile
09:14:36 4 game that will work well on an iPhone.

09:14:39 5 **Q.** So in your experience, why does a developer choose to
09:14:43 6 develop a game simply for the iPhone and not for the Xbox?

09:14:51 7 **MR. SRINIVASAN:** Objection. Foundation.

09:14:54 8 **THE COURT:** Lay some foundation.

09:14:55 9 Sustained.

09:14:57 10 **BY MR. EARNHARDT:**

09:14:57 11 **Q.** Do you have an understanding as to the process that
09:14:59 12 developers go through in deciding how to design their games or
09:15:05 13 for which console?

09:15:07 14 **A.** I don't have a depth understanding. I know that there are
09:15:10 15 design choices and platform choices that have to be made on
09:15:13 16 these, and there are games that again you take a choice to go
09:15:17 17 and write this game to run on console or you're just going to
09:15:21 18 do like an easier game and put in, you know, free-to-play
09:15:26 19 hooks throughout it for monetization or you are going to do a
09:15:31 20 sandbox game where like a Roblox game where it's a single app
09:15:36 21 with lots of games inside of it.

09:15:38 22 **Q.** Let me actually just show you one document.

09:15:45 23 **THE COURT:** Ms. Wright, while he is getting that, let
09:15:47 24 me ask, do you -- how many of the games are developed by your
09:15:53 25 in-house Microsoft folks versus third parties?

09:15:56 1 **THE WITNESS:** That's a great question. I don't know
09:15:58 2 the exact split. I would venture a guess, and that would be
09:16:06 3 probably there is roughly 3500 games in -- that we play on an
09:16:12 4 Xbox and there are probably I would say less than a hundred
09:16:17 5 that are developed by Microsoft.

09:16:19 6 **THE COURT:** Okay. So principally third party?

09:16:24 7 **THE WITNESS:** Yes.

09:16:24 8 **THE COURT:** Okay. Go ahead.

09:16:27 9 **MR. EARNHARDT:** Your Honor, would you like a binder
09:16:29 10 of these exhibits?

09:16:30 11 **THE COURT:** Sure. I mean, I think we pulled them
09:16:33 12 before.

09:16:51 13 **BY MR. EARNHARDT:**

09:16:52 14 **Q.** If you could turn in your binder to Exhibit PX2476. Just
09:17:06 15 let me know when you're there.

09:17:08 16 **A.** Okay. I'm there.

09:17:09 17 **Q.** What is the title of this presentation?

09:17:10 18 **A.** "GGPD Portfolio Team, Executive Portfolio Update."

09:17:18 19 **Q.** And GGPD is Global Gaming Partnership and Development?

09:17:22 20 **A.** That's correct.

09:17:24 21 **Q.** What is it date of this presentation?

09:17:25 22 **A.** August of 2020.

09:17:26 23 **MR. EARNHARDT:** Your Honor, I move to admit PX2476.

09:17:30 24 **THE COURT:** Is there objection?

09:17:32 25 **MR. SRINIVASAN:** No objection.

THE COURT: 2476 is admitted.

(Plaintiff's Exhibit 2476 received in evidence)

BY MR. EARNHARDT:

Q. If you could turn to the first page. Now, be very careful. There is information that has been redacted from this, so don't read any of the information here. Just try to listen carefully to my questions, and I will be very careful in what I ask you about.

A. I'm sorry. Are we on the 76.4, "Worldwide Xbox One Releases"?

Q. Yes. Where it says "Worldwide High Profile Xbox One Releases." Do you see that?

A. I do.

Q. Do you see there are different columns on this chart for third quarter, fourth quarter, and first quarter?

A. I do.

Q. Each column shows the Xbox One releases in that quarter or expected for that quarter?

A. Correct.

Q. So I just want to take an example. If you look at the second quarter -- I'm sorry -- the fourth -- withdrawn.

If you look at the second column, the fourth quarter for calendar year 2020, and you take a look at the second title, FIFA 21?

A. Uh-huh.

09:18:33 1 Q. Do you see under that, there are a series of -- there's a
09:18:38 2 series of information?

09:18:39 3 A. Uh-huh.

09:18:40 4 Q. October 2020. What -- that's the anticipated release
09:18:42 5 date; is that right?

09:18:46 6 A. I'm sorry. You are asking the fourth quarter? Is that
09:18:49 7 the anticipated release date?

09:18:50 8 Q. Well, under FIFA 21, it has the month October 2020. Do
09:18:55 9 you see?

09:18:55 10 A. Yes.

09:18:56 11 Q. Next to that it says "Electronic Arts." What is that?

09:19:00 12 A. Electronics Arts is the publisher of FIFA 21.

09:19:04 13 Q. Next to that it has a series of two-letter acronyms. Do
09:19:08 14 you know what those are?

09:19:09 15 A. Yes. Those are the countries that will release them.

09:19:12 16 Q. What are those countries for FIFA 21?

09:19:14 17 A. U.S., Europe, Australia, Latin America.

09:19:18 18 Q. Next to that there are a series of three or two digit
09:19:21 19 acronyms. Do you see those?

09:19:23 20 A. I do.

09:19:24 21 Q. What do those those show?

09:19:25 22 A. Those show the platforms that the games will release on.

09:19:28 23 Q. What are those platforms for FIFA 21?

09:19:31 24 A. Xbox One, PlayStation 4, Nintendo Switch, and PC Xbox
09:19:38 25 version post launch.

09:19:40 1 Q. And iOS is listed there?

09:19:42 2 A. It is not.

09:19:44 3 Q. Okay. Just look, if you can, through all the games listed
09:19:49 4 on this chart and tell me if you see iOS listed for any of
09:19:53 5 them.

09:19:54 6 A. I do not.

09:19:57 7 Q. If you turn to the page 2476.6. Do you see this chart
09:20:10 8 "Titled High Profile Competitive Console Exclusives"?

09:20:14 9 A. I do.

09:20:15 10 Q. Which video game platforms are listed on this slide?

09:20:19 11 A. PlayStation and Nintendo Switch and then competitive
09:20:23 12 stores, which would be PC stores.

09:20:29 13 Q. Such as the Epic Games Store and Google?

09:20:36 14 A. Epic Games or Stadia. I only see Epic and Stadia here.
09:20:43 15 Yes. Epic and Stadia.

09:20:45 16 Q. Is IOS listed anywhere on this page?

09:20:47 17 A. It is not.

09:20:50 18 Q. You can put that away.

09:20:51 19 So let's focus on where consumers can buy Xbox games.
09:20:59 20 Where can a consumer buy a video game to run on an Xbox
09:21:03 21 console?

09:21:03 22 A. On an Xbox console, you can buy a disk from a retailer, so
09:21:11 23 you can go out to Wal-Mart, Best Buy, by a physical disk that
09:21:16 24 can run, or you can -- from the Xbox console, there is the
09:21:20 25 Xbox Store where you can sign up to the Game Pass subscription

09:21:25 1 to get access to a broad set of titles, a hundred-plus titles,
09:21:29 2 or you can download any of those individual titles to be
09:21:32 3 played on the Xbox.

09:21:34 4 **Q.** Okay. So let's focus on the Xbox Store. Can you explain
09:21:37 5 in just a bit more detail what is the Xbox Store?

09:21:41 6 **A.** The Xbox Store is a curate store for the Xbox console that
09:21:48 7 gives you the option to see the titles, buy the titles, or
09:21:54 8 sign up to a subscription, as well as, you know, get other --
09:22:01 9 I guess not in the stores, so I'll leave it at that.

09:22:05 10 **Q.** How can a user access the Xbox Store?

09:22:08 11 **A.** You access the Xbox Store through -- if we're speaking
09:22:13 12 purely on console, you access the Xbox Store -- it's part of
09:22:19 13 the integrated experience, so when you go in to load up
09:22:23 14 your -- your Xbox, you see your community, you see your store,
09:22:29 15 you see the games you may already own.

09:22:31 16 **Q.** And who shops at the Xbox Store?

09:22:35 17 **A.** People who own an Xbox.

09:22:36 18 **Q.** Does the Xbox Store offer games that can be run on any
09:22:42 19 platform other than the Xbox?

09:22:49 20 **A.** In the Xbox Store for console, no, not that I'm aware of.

09:22:53 21 **Q.** Can a user buy a game from the Xbox Store and based on
09:22:58 22 that purchase, run that game natively on the iPhone?

09:23:01 23 **A.** No.

09:23:03 24 **Q.** Could the user go to the iPhone and purchase a game and
09:23:08 25 based on that purchase, run it natively on an Xbox console?

09:23:12 1 **A.** No.

09:23:14 2 **Q.** Does the Xbox Store compete for transactions with the
09:23:19 3 Apple App Store?

09:23:21 4 **A.** No.

09:23:23 5 **Q.** In your role in business development at Xbox, do you have
09:23:27 6 a preference for whether a potential user buys a game on iOS,
09:23:32 7 or are you agnostic as to whether that user buys a game on
09:23:37 8 iOS?

09:23:40 9 **A.** I -- given that they're not many at all of our games that
09:23:45 10 run on iOS that are competing games, then we don't -- we're
09:23:50 11 agnostic. If you want to buy a game on iOS, wonderful.

09:23:54 12 **Q.** And how does that compare to whether a user buys a game on
09:23:57 13 the PlayStation?

09:24:01 14 **A.** I think if you've made a choice to buy a game on -- if you
09:24:05 15 made a choice to buy a PlayStation, then you're buying games
09:24:08 16 from Sony. That is taking away from you being an owner of an
09:24:15 17 Xbox for the most part and buying games through the Xbox
09:24:17 18 Store.

09:24:18 19 **Q.** And that's different from iOS?

09:24:20 20 **A.** It is. Sony is our direct competitor.

09:24:23 21 **THE COURT:** I want to remind you again, open-ended
09:24:25 22 questions.

09:24:26 23 **MR. EARNHARDT:** Okay. Thank you, Your Honor.

09:24:29 24 **Q.** Are there some specific games that are available on both
09:24:34 25 the Xbox system and iOS in different forms? The same game

09:24:39 1 title but in different forms?

09:24:42 2 **A.** Xbox system and iOS in different forms, yes. There is
09:24:46 3 several games that have been -- that have an iOS version of
09:24:50 4 them written.

09:24:52 5 **Q.** So, for example, Minecraft?

09:24:55 6 **A.** Correct.

09:24:55 7 **Q.** Or Roblox?

09:24:57 8 **A.** Correct.

09:24:57 9 **Q.** Used to include *Fortnite*?

09:24:59 10 **A.** Correct.

09:25:03 11 **Q.** For those types of games, do you view sales on iOS as a
09:25:07 12 substitute for sales on the Xbox platform?

09:25:11 13 **A.** No.

09:25:15 14 **Q.** Do you believe the Xbox Store competes with the Apple App
09:25:21 15 Store for transactions in even those types of games?

09:25:25 16 **A.** I don't believe so. I don't believe it's an either/or
09:25:29 17 choice. I believe if you're playing Minecraft on your mobile
09:25:33 18 phone, then you're buying, you know, things within iOS, you --
09:25:39 19 that, you know, is valuable to the Microsoft business. At the
09:25:42 20 same time if you are choosing to play Minecraft on the Xbox
09:25:47 21 console at that point in time, that's fine as well.

09:25:49 22 **Q.** If a user buys a game on the iPhone, does Microsoft
09:25:54 23 believe that makes it unlikely that the user will buy the same
09:25:58 24 game on the Xbox if the user owns an Xbox?

09:26:01 25 **A.** No.

09:26:07 1 **Q.** And what are some reasons why Microsoft believes that
09:26:11 2 users would be likely to buy games on both platforms?

09:26:18 3 **A.** If you look at the market data, the data that I have seen,
09:26:23 4 there are roughly three billion gamers in the world.
09:26:28 5 Ninety-six percent of those gamers play games on a mobile
09:26:33 6 device. Also more than 50 percent of those gamers play on
09:26:38 7 another device, and so what you have to believe from that is
09:26:42 8 that people are playing games on mobile, but they are also
09:26:47 9 playing on a complementary device. So if you are buying games
09:26:55 10 on one, you are buying stuff on another, that it's additive.

09:27:02 11 **Q.** Could a user play a game on her Xbox console while she's
09:27:08 12 waiting in line at the DMV?

09:27:10 13 **A.** No.

09:27:12 14 **Q.** Could she potentially do that with an iPhone?

09:27:15 15 **A.** Of course.

09:27:19 16 **Q.** One final question on this topic and then we'll change
09:27:21 17 topics.

09:27:24 18 When you're planning your business development strategy at
09:27:27 19 Xbox, do you factor in the following scenario:

09:27:32 20 A user is playing a game on a device, on a non-Xbox
09:27:38 21 platform. They see something in the game that they want to
09:27:43 22 purchase. They choose not to make the purchase then and there
09:27:47 23 from the device that they're playing on; instead, they stop
09:27:51 24 playing the game, close out of the game, move to wherever
09:27:56 25 their Xbox is, turn it on, boot it up, log into the game on

09:28:02 1 their Xbox console or their friend's Xbox console, make the
09:28:07 2 purchase for the item in the game that they were playing,
09:28:11 3 power down the Xbox, go back to the other device, and then
09:28:14 4 play the game with the item they just purchased. Do you
09:28:16 5 factor that in?

09:28:18 6 **A.** No. That's a very unlikely scenario.

09:28:26 7 **Q.** Switching topics a bit.

09:28:30 8 For apps purchased through the Xbox Store, games purchased
09:28:34 9 through the Xbox Store, does Microsoft charge developers a
09:28:37 10 commission?

09:28:38 11 **A.** Yes.

09:28:38 12 **Q.** And what is Microsoft's standard commission on the Xbox
09:28:41 13 Store?

09:28:43 14 **A.** Our published commission is 30 percent.

09:28:46 15 **Q.** Does Microsoft capture a meaningful share of the revenue
09:28:51 16 anywhere else in the Xbox ecosystem?

09:28:57 17 **A.** I'm not sure I understand the question.

09:28:59 18 **THE COURT:** Me either.

09:29:00 19 **BY MR. EARNHARDT:**

09:29:02 20 **Q.** Let me clarify.

09:29:03 21 **THE COURT:** Ask open-ended questions and then I can
09:29:05 22 get an answer. Go ahead.

09:29:07 23 **BY MR. EARNHARDT:**

09:29:08 24 **Q.** Does Microsoft -- how much margin does Microsoft earn on
09:29:15 25 the sale of the Xbox consoles?

09:29:17 1 **A.** We don't. We sell the consoles at a loss. We subsidize
09:29:23 2 every console.

09:29:24 3 **Q.** If Microsoft sells hardware consoles at a loss, why does
09:29:28 4 Microsoft keep selling them?

09:29:31 5 **A.** Because our business model is set up so that we can
09:29:35 6 deliver an end-to-end gaming experience. The hardware is
09:29:41 7 critical to us delivering that gaming experience, and
09:29:45 8 therefore we know we need to -- for gamers to be able to have
09:29:53 9 a console. And we subsidize that and then we make money over
09:29:56 10 the long run on the game sales or the game subscriptions.

09:30:01 11 **Q.** Just to be clear, does Microsoft ever earn a profit on the
09:30:05 12 sale of an Xbox console.

09:30:08 13 **A.** No.

09:30:09 14 **Q.** How does that compare to whether Apple earns a profit on
09:30:13 15 the sale of an iPhone?

09:30:15 16 **MR. SRINIVASAN:** Objection. Foundation.

09:30:17 17 **THE COURT:** Sustained.

09:30:17 18 **BY MR. EARNHARDT:**

09:30:20 19 **Q.** How does the fact that you testified to, that Microsoft
09:30:26 20 loses money on the sale of its consoles, relate to the 30
09:30:30 21 percent commission that Microsoft charges in the Xbox Store?

09:30:37 22 **A.** Our business model is such that we subsidize the console.
09:30:40 23 We charge a 30 percent commission for the games to be able to
09:30:45 24 run in that community so that the players can access the
09:30:53 25 games, and in the long run, that pays for the console.

09:30:59 1 **Q.** If Microsoft did not charge a commission on the Xbox
09:31:03 2 Store, would it make money or lose money in its Xbox business?

09:31:10 3 **A.** We would lose money. It would -- yeah. It would be an
09:31:13 4 unprofitable business.

09:31:16 5 **Q.** Now, Microsoft also runs something called the Windows
09:31:19 6 Store on PC; correct?

09:31:21 7 **A.** That's correct.

09:31:21 8 **Q.** What is the Windows Store on PC?

09:31:24 9 **A.** It is a Windows Store that runs on PC that is -- has
09:31:33 10 applications and games and other things that you might expect
09:31:36 11 in a PC store.

09:31:38 12 **Q.** So what sort of apps does Microsoft sell on the Windows
09:31:43 13 Store?

09:31:44 14 **A.** All sorts of apps. We have productivity apps, we have
09:31:49 15 game apps, we have, you know, other media and entertainment
09:31:53 16 apps for download, so a variety.

09:31:57 17 **Q.** What is the current commission that Microsoft charges on
09:32:02 18 the Windows Store?

09:32:03 19 **A.** The commission has been 30 percent on the Windows Store.
09:32:07 20 We just announced reducing that to 12 percent.

09:32:11 21 **Q.** And when will that become effective?

09:32:13 22 **A.** August, I believe.

09:32:16 23 **Q.** And why is Microsoft changing the commission it charges on
09:32:19 24 the Windows Store?

09:32:21 25 **A.** There are multiple stores that compete on Windows. There

are, you know -- there is the Epic Games Store, there is the Steam Store, there is the ability to download the games directly from the publishers themselves, which happen to be the vast majority. And so for our, you know, Windows Store, in order for it to be competitive and relevant, we needed to reduce the commission.

Q. Are you aware of any plans to change the commission charged by Microsoft on the Xbox Store?

A. No.

Q. Does Microsoft allow competing app store on its Xbox platform like it does on Windows?

A. No.

Q. Does Microsoft allow developers to distribute their games directly to consumers on its Xbox platform like it does on Windows?

A. No.

Q. Can you explain to me then the ways the Xbox ecosystem is different from the Windows ecosystem?

A. The Xbox ecosystem is much, much smaller. I could share the numbers but would prefer to do that in a closed setting, but the numbers are, you know, materially smaller versus the billions of PC or Windows devices, I should say, that are out there.

And so, you know, the way that they are different in the gaming world is that the Xbox Store is this curated,

09:34:00 1 custom-built, end-to-end hardware-to-software experience. The
09:34:05 2 Windows world is, you know, an open platform with lots of
09:34:08 3 different scenarios that people use these devices for with
09:34:13 4 the, you know, open browser where you can go access anything
09:34:17 5 that you may want, download it onto the device or use
09:34:21 6 alternative stores beyond Microsoft's.

09:34:27 7 **Q.** Have you heard the terms "special purpose platform" and
09:34:30 8 "general purpose platform"?

09:34:31 9 **A.** I've heard those. I think the deposition was one of the
09:34:35 10 times that I first heard them.

09:34:37 11 **Q.** Do you have an understanding of what those terms mean?

09:34:39 12 **A.** Sure.

09:34:41 13 **Q.** Which is the Xbox ecosystem, special purpose or general
09:34:45 14 purpose?

09:34:46 15 **A.** Special purpose.

09:34:48 16 **Q.** Which is the Windows ecosystem, special purpose or general
09:34:51 17 purpose?

09:34:52 18 **A.** General purpose.

09:34:53 19 **Q.** Now, you testified --

09:34:55 20 **THE COURT:** What are they? What is your
09:34:56 21 understanding? It's not really relevant if I don't understand
09:34:59 22 your understanding.

09:35:00 23 **THE WITNESS:** Sure.

09:35:00 24 So a special purpose platform is where you are basically
09:35:07 25 building a hardware, a piece of hardware to do a specific

09:35:12 1 thing, right, just like you would, I guess, in the Apple

09:35:15 2 scenario, you would talk about the iPod was designed to play

09:35:19 3 music. That was really what it did.

09:35:21 4 The Xbox is designed to give you a gaming experience.

09:35:26 5 People buy an Xbox because they want to play games.

09:35:29 6 **THE COURT:** So does it have to be just one thing?

09:35:32 7 **THE WITNESS:** Typically. I think so. It's like
09:35:35 8 serving a special -- a very targeted, special intent.

09:35:41 9 **THE COURT:** Okay. So anything beyond one is general?

09:35:47 10 **THE WITNESS:** I think -- I can't think of an example
09:35:49 11 not, but I think if it's a genre, games, music, you know,
09:35:54 12 things that you're like I'm buying this to do this particular,
09:35:57 13 like, very targeted theme, that's how I -- that would be my
09:36:02 14 definition of "special purpose."

09:36:04 15 **THE COURT:** And then how would you define "general"?

09:36:07 16 **THE WITNESS:** General is where you're buying
09:36:10 17 something because it can do a wide variety of things and that
09:36:16 18 changes every day. As new ideas are getting created, new
09:36:23 19 types of use cases are happening, you know, a new type of
09:36:28 20 technology gets invented, you can go and now expand to that
09:36:32 21 general purpose platform to go into that thing, so I think a
09:36:35 22 general purpose in the sense of like it can do a bunch of
09:36:40 23 things already, and it has the aperture to do a bunch more
09:36:44 24 things.

09:36:45 25 **THE COURT:** Okay. Thank you.

09:36:46 1 Proceed.

09:36:47 2 **MR. EARNHARDT:** Thank you, Your Honor.

09:36:48 3 **Q.** You testified earlier that you attempted to partner with
09:36:52 4 Apple to bring Microsoft's Cloud gaming service to iOS;
09:36:56 5 correct?

09:36:57 6 **A.** That's correct.

09:36:58 7 **Q.** Did you gain knowledge of, at least at a general level,
09:37:02 8 how the iOS ecosystem works from that experience?

09:37:05 9 **A.** I did.

09:37:06 10 **Q.** Okay. Is the iOS ecosystem a special purpose ecosystem or
09:37:12 11 a general purpose ecosystem?

09:37:14 12 **A.** The iOS ecosystem to me is a general purpose ecosystem
09:37:17 13 because there is a variety -- a wide, wide variety like
09:37:21 14 millions of different ideas and applications that can come
09:37:23 15 through it.

09:37:27 16 **Q.** In your understanding, does Apple operate a model whereby
09:37:34 17 it needs to subsidize its hardware sales in the iOS ecosystem?

09:37:39 18 **MR. SRINIVASAN:** Objection. Foundation.

09:37:40 19 **THE COURT:** Sustained.

09:37:42 20 **BY MR. EARNHARDT:**

09:37:44 21 **Q.** Compared to the Xbox ecosystem, how many users does the
09:37:47 22 iOS ecosystem have?

09:37:49 23 **MR. SRINIVASAN:** Objection. Foundation.

09:37:50 24 **THE COURT:** Sustained. If you want her to answer
09:37:53 25 those kinds of questions, you have to lay a foundation;

otherwise, this comes in through different witnesses.

MR. EARNHARDT: Okay. Let me just try to lay a foundation quickly. I won't spend much time on it. I can move on, Your Honor.

THE COURT: It's not that -- it's your time. I'm just saying I don't know how a Microsoft person is going to have the foundation to answer those questions.

MR. EARNHARDT: Well, let me ask this.

Q. Again, when you were trying to bring the xCloud gaming service to iOS and partner with Apple, did that require you to understand how Apple operates its iOS ecosystem?

A. Yes. And how many users it has, yes.

Q. Was it important to you in trying to bring the xCloud gaming system to iOS to know how many users that might reach?

A. Absolutely.

Q. Was it important to you to know how many applications there might be on iOS competing with your service?

A. Yes.

Q. On that basis, do you know how many iOS users there are?

MR. SRINIVASAN: Objection. Foundation.

THE COURT: Sustained. I mean, do you have -- did Apple share information -- their proprietary information with you?

THE WITNESS: It's well-published in the press, so --

THE COURT: So this is from external resources

09:39:01 1 like -- I'm -- sustained. Just because something is in the
09:39:07 2 press doesn't make it true.

09:39:10 3 **THE WITNESS:** I think it's part of their financial
09:39:12 4 reporting.

09:39:13 5 **THE COURT:** Okay.

09:39:14 6 **MR. EARNHARDT:** Okay. I'll move on, Your Honor.

09:39:16 7 **Q.** Let me show you another document. If you could look at
09:39:18 8 your binder. Actually -- look at your binder. Turn to tab
09:39:26 9 DX5523.

09:39:31 10 **THE COURT:** And to the point, if you want to show her
09:39:33 11 a financial statement, that's -- that is admissible evidence.

09:39:37 12 **MR. EARNHARDT:** Yeah, of course, Your Honor. We can
09:39:40 13 do that with a different witness.

09:39:51 14 **Q.** This is another document that has redactions so we will go
09:39:54 15 very slowly, and I will be careful not to ask inappropriate
09:39:57 16 questions, and don't volunteer information that you see
09:40:00 17 because it may be redacted.

09:40:02 18 **A.** Okay.

09:40:02 19 **Q.** My first question is do you recognize this document?

09:40:04 20 **A.** I do.

09:40:05 21 **Q.** What is it?

09:40:07 22 **A.** It is a report that is built by our Business Planning and
09:40:13 23 Strategy Team, and it does a market look at where profits come
09:40:19 24 from in the game industry.

09:40:21 25 **Q.** And did you receive this document in the ordinary course

09:40:23 1 of business?

09:40:24 2 **A.** I did.

09:40:25 3 **MR. EARNHARDT:** Move to admit DX5523, Your Honor.

09:40:29 4 **THE COURT:** Any objection?

09:40:30 5 **MR. SRINIVASAN:** No objection, Your Honor.

09:40:31 6 **THE COURT:** Admitted.

09:40:32 7 (Defendant's Exhibit 5523 received in evidence)

09:40:35 8 **BY MR. EARNHARDT:**

09:40:36 9 **Q.** If you could turn to slide 31. This is a circumstance in
09:40:48 10 which we are going to be very careful.

09:40:50 11 **A.** Okay.

09:40:50 12 **Q.** So don't say any numbers.

09:40:52 13 At a very, very high level, what does this slide show?

09:40:58 14 **A.** The profit breakdown on consoles.

09:41:02 15 **Q.** And, again -- well, do you see section 7 near the bottom
09:41:08 16 that says "total hardware"?

09:41:09 17 **A.** I do.

09:41:11 18 **Q.** And, again, I don't want you to say it out loud, but do
09:41:15 19 you see the number that has been blotted out on the screen but
09:41:19 20 is clear in your book next to Microsoft under the margin
09:41:22 21 percentage?

09:41:24 22 **A.** I do.

09:41:25 23 **Q.** And does that number state the Xbox console operating
09:41:30 24 margin as of 2019?

09:41:32 25 **A.** It does.

09:41:37 1 **Q.** And if you can turn to slide 17.

09:41:43 2 This is another slide in which a lot of information has
09:41:45 3 been redacted, so please don't read any specific numbers on
09:41:49 4 the page, but do you see the title of this slide as "PC Client
09:41:57 5 Revenues by Sales Channel"?

09:41:58 6 **A.** Yes.

09:41:59 7 **Q.** And do you see near the top where it says, "In PC client,
09:42:03 8 direct to consumer captured more than 83 percent of spend
09:42:08 9 while platforms generated approximately 15 percent of sales"?

09:42:11 10 **A.** Yes.

09:42:12 11 **Q.** What does that mean?

09:42:14 12 **A.** This means that for people buying games on PCs, that they
09:42:20 13 are going directly to the publisher or developer to get that
09:42:25 14 game on PC and spending the money with them. The platforms,
09:42:31 15 whether it's a subscription or through a store only, generated
09:42:35 16 15 percent of the sales.

09:42:37 17 **Q.** On PC?

09:42:38 18 **A.** Correct.

09:42:38 19 **Q.** So just to make sure I understand, publishers are able to
09:42:41 20 distribute their apps directly to consumers on Windows PC?

09:42:46 21 **A.** That's correct.

09:42:46 22 **Q.** And based on this, what percentage of the revenue in the
09:42:49 23 PC ecosystem is derived from that method of distribution?

09:42:53 24 **A.** 83 percent.

09:42:55 25 **Q.** On iOS, can developers distribute their apps directly to

09:42:59 1 users?

09:43:00 2 **A.** They cannot.

09:43:06 3 **Q.** If you could please turn to slide 11. And, again, there
09:43:15 4 is information that's been sealed here so we will be very
09:43:19 5 careful.

09:43:21 6 What does this slide show?

09:43:23 7 **A.** The publisher versus platform share of profit by segment.

09:43:31 8 **Q.** And based on this, what is the percentage of the profit
09:43:42 9 share that app publishers retain on PC?

09:43:48 10 **A.** On PC, app publishers retain 95 percent of the profit.

09:43:53 11 **Q.** And what is that percentage on mobile?

09:43:57 12 **A.** 61 percent.

09:43:59 13 **Q.** Do you see near the top of this slide it says,
09:44:01 14 "Platform-holders in closed device ecosystems and networks
09:44:08 15 capture meaningful profit share, 39 to 46 percent, while open
09:44:12 16 ecosystems favor publishers"?

09:44:14 17 **A.** I do.

09:44:15 18 **Q.** What is a closed ecosystem?

09:44:17 19 **A.** A closed ecosystem would be Xbox as a console or iOS.

09:44:25 20 **Q.** And what makes that closed?

09:44:27 21 **A.** Because you cannot distribute games through any other
09:44:30 22 method.

09:44:31 23 **Q.** And then what is an open ecosystem?

09:44:34 24 **A.** You can -- you have competing ways to distribute games.

09:44:38 25 **Q.** How does competition for distribution of games compare in

an open ecosystem to a closed ecosystem?

A. An open ecosystem is much more profitable for developers and publishers.

Q. If you can turn to slide 3. Bullet 2 there reads, "Publishers captured the majority of total industry profit, 66 percent. Platforms in closed ecosystems/networks, e.g., console, mobile, browser, generated 39 to 46 percent of segment profits while platforms in open ecosystems, i.e., PC client, generated only 5 percent of segment profit."

Do you see that?

A. I do.

Q. And then the next bullet reads, "Platforms relatively low share of PC client segment profit, 5 percent, reflects revenue flowing directly from consumers to publishers. 83 percent of worldwide PC client revenue"?

A. Yes, I see that.

Q. Is that consistent with your understanding of how the market dynamics are?

A. Yes, it is.

Q. And then if you turn back to slide 11, under the -- there's a big heading, sub-heading, then a tiny sub-heading.

Focusing on the tiny sub-heading, it says, "U.S. dollar billions" redacted. Don't say the number. "Software and services profit only excludes five billion in game video profit and dedicated hardware profit." Do you see that?

09:46:23 1 A. I do.

09:46:24 2 Q. Does that mean that the bars on this chart exclude profits
09:46:28 3 from the sale of iPhones in the mobile column?

09:46:36 4 A. I'm sorry. I'm reading this again.

09:46:38 5 Yes, it does.

09:46:43 6 Q. And if you could turn to slide 9 for me, please. And,
09:46:49 7 again, I don't want you to read this out loud. But do you see
09:46:53 8 where footnote 1 is located?

09:46:56 9 A. I do.

09:46:57 10 Q. And can you read footnote 1 to yourself. Do not read it
09:47:01 11 out loud.

09:47:03 12 A. (Witness reads document.)

09:47:06 13 Yes. I see it.

09:47:08 14 Q. Is that consistent with your understanding?

09:47:09 15 A. Yes, it is.

09:47:12 16 Q. Okay. You can put that aside.

09:47:16 17 **THE COURT:** So with respect to this, I suspect I
09:47:20 18 won't remember -- I said with respect to this, what I have
09:47:25 19 appropriately is the unredacted version. What I don't have is
09:47:29 20 the highlighted redacted version, and in order to make sure
09:47:35 21 that I don't inadvertently mention something in an order that
09:47:41 22 has been redacted, I need you all to give me a highlighted
09:47:45 23 version of this.

09:47:46 24 **MR. EARNHARDT:** We will do that, Your Honor.

09:47:48 25 **THE COURT:** Thank you. Proceed.

BY MR. EARNHARDT:

Q. Okay. I would like to come back to a topic you mentioned right at the beginning of your testimony, Microsoft's Cloud gaming service.

A. Uh-huh.

Q. We've heard some testimony on this, but what is Cloud gaming?

A. It is the ability to take games that were built for -- you can think about it -- most specifically if a game was built -- actually, let me back up and think about the category as a whole.

Cloud gaming is the ability to distribute games over the internet without requiring any hardware.

Q. And how does that work?

A. You can run the games through data centers in other locations and be able to send a feed down to any device that has a screen internet connection and then send a command that controls the game back up to the Cloud, so effectively you are playing the game in a remote data center.

Q. And has Microsoft developed its own Cloud gaming service?

A. Yes, we have.

Q. What's it called?

A. The technology, the code name for the technology was called xCloud. When we released it to market commercially, it's a feature capability of our Game Pass Ultimate

09:49:06 1 Subscription.

09:49:08 2 **Q.** Will you understand what I mean if I call it xCloud?

09:49:11 3 **A.** I will.

09:49:12 4 **Q.** And do you typically call it xCloud at Xbox?

09:49:15 5 **A.** We do.

09:49:17 6 **Q.** Why did Microsoft -- well, step back. What did Microsoft

09:49:22 7 have to do to develop the xCloud product?

09:49:27 8 **A.** We had to effectively go and use -- find data centers
09:49:35 9 around the world that were already, you know -- as part of our

09:49:40 10 Azure operations. We went into many of our existing data

09:49:44 11 centers, but we had to go and a way that it's architected,

09:49:49 12 which I'm a little bit cautious about -- talking about here

09:49:54 13 publicly --

09:49:54 14 **Q.** Yeah. We don't need specifically. Just generally what
09:49:58 15 were the steps that had to be taken?

09:50:00 16 **A.** We had to find data centers, make it capable through
09:50:03 17 hardware and equipment for those games to be run natively out

09:50:08 18 of those data centers, and then we, you know, effectively had

09:50:12 19 to make our global streaming stack, update our client, you

09:50:16 20 know, do all the sorts of things that would be necessary in

09:50:19 21 order to deliver those games over the internet.

09:50:22 22 **Q.** And did you develop a native application that would allow
09:50:26 23 a user to access xCloud?

09:50:28 24 **A.** We developed a Game Pass Ultimate native -- I'm sorry -- a

09:50:34 25 Game Pass application that is a native mobile app, if that's

09:50:38 1 what we are talking about is mobile, that could access xCloud
09:50:41 2 that would have all the games then and be able to play those
09:50:45 3 games remotely.

09:50:46 4 **Q.** What platforms is Xbox Cloud gaming currently available on
09:50:50 5 as a native application?

09:50:53 6 **A.** As a native application, it is available on Android.

09:50:58 7 **Q.** Did you build -- well, withdrawn.

09:51:01 8 Is it available as a native application on iOS?

09:51:05 9 **A.** No.

09:51:06 10 **Q.** Is it available in any form on iOS?

09:51:11 11 **A.** Today it is not available on iOS, except a couple of weeks
09:51:15 12 ago, we released a beta version to distribute it to iOS
09:51:23 13 customers through the browser.

09:51:25 14 **Q.** And what does it mean to be "in beta"?

09:51:28 15 **A.** It is your early testing period before you release
09:51:32 16 something commercially.

09:51:36 17 **Q.** And was Xbox Cloud gaming available on Android before it
09:51:40 18 was available on iOS?

09:51:41 19 **A.** Yes.

09:51:42 20 **Q.** And why did you make the decision to also make it
09:51:46 21 available on iOS?

09:51:48 22 **A.** We tried very hard to get it onto iOS but were not able,
09:51:55 23 and so our strategy for xCloud was to release first on mobile,
09:51:59 24 and Android was the platform we were able to do so on.

09:52:03 25 **Q.** And just even more generally, if you have an app on

09:52:08 1 Android, why do you need an app on iOS?

09:52:11 2 **A.** They're different apps.

09:52:12 3 **Q.** And how does that relate to the users that may access
09:52:15 4 them?

09:52:21 5 **A.** I'm not sure I understand the question.

09:52:23 6 **Q.** Could a user with an iPhone access the Android app?

09:52:27 7 **A.** No.

09:52:28 8 **Q.** Could a user with the Android app access the iOS app?

09:52:32 9 **A.** No.

09:52:33 10 **Q.** Did that factor into your decision to develop apps for
09:52:36 11 both platforms?

09:52:37 12 **A.** Yes.

09:52:51 13 **Q.** Okay. Did you attempt to bring a native app of xCloud to
09:52:57 14 iOS?

09:52:58 15 **A.** Yes, we did. Over a long period of time.

09:53:01 16 **Q.** At the beginning of that process, did you seek direction
09:53:04 17 from Apple about how to do that?

09:53:07 18 **A.** Yes, we did.

09:53:08 19 **Q.** And what did Apple tell you?

09:53:12 20 **A.** The conversations had started before I began in the
09:53:16 21 business. The very first meeting I had with Apple was
09:53:21 22 understanding what are the iOS policies that are likely to
09:53:26 23 prevent -- that would prevent this from coming to iOS, and we
09:53:32 24 went to Cupertino to meet with Apple to talk through those
09:53:37 25 policies and understand whether there was intention to change

09:53:40 1 them because other forms of media and entertainment were able
09:53:45 2 to deliver the Cloud streaming service, and games was the
09:53:50 3 exclusion. So we weren't clear if that was intentional or if
09:53:54 4 it was in the middle of the policy being changed.

09:53:57 5 And we also wanted help and direction from Apple to -- for
09:54:02 6 them to see the product, to understand how it would run, and
09:54:05 7 to help us think about the way that we could be compliant or
09:54:09 8 do what was necessary to meet their policies.

09:54:12 9 **Q.** And did you receive direction from Apple?

09:54:16 10 **A.** The very first meeting we received direction to go and
09:54:20 11 follow the Netflix model or the audible model which would have
09:54:26 12 been great, quite frankly, for us. And then shortly after, we
09:54:31 13 heard that was not the right model for us, and we needed to go
09:54:35 14 a different direction with a model called Game Club where
09:54:39 15 every single game had to be individually downloaded onto the
09:54:43 16 phone.

09:54:44 17 **Q.** And do you have an understanding why that would have been
09:54:48 18 required under Apple's policies?

09:54:53 19 **A.** No. We -- we were seeking to understand why that was the
09:54:57 20 case, why there was a special carve-out for all other types of
09:55:01 21 media and entertainment, and gaming was not included in that,
09:55:05 22 but we did not get an answer, other than you must break out
09:55:09 23 every game into an individual executable.

09:55:16 24 **Q.** Did you change your app to comply with the way that Apple
09:55:23 25 said it would need to be broken out to be acceptable on iOS?

09:55:28 1 **A.** We spent a good bit of time just trying to understand why.
09:55:31 2 If you think about there are games like Roblox, right, that
09:55:35 3 are a single app that have many games in them, and so we were
09:55:38 4 looking at the parallel and saying gosh, we just don't
09:55:41 5 understand because this is a single app with many games. You
09:55:44 6 know, you think about Netflix, Spotify, they are single app
09:55:50 7 with many songs and movies. You think about YouTube. It's a
09:55:54 8 single app with many videos. Why could we not have a single
09:55:58 9 app with many games? And so we spent a lot of time, probably
09:56:01 10 three or four months, trying to understand what this was.

09:56:05 11 At that point, we -- we explained what would happen from a
09:56:11 12 user experience perspective if we tried to break out every
09:56:15 13 game. You would have to put the streaming stack, according to
09:56:20 14 Apple's policies, into every single game. And what that would
09:56:25 15 mean is if you think about a Netflix or Spotify, every time
09:56:28 16 you make any update to your streaming technology, which
09:56:30 17 happens all the time, it would push that same update out to
09:56:35 18 your phone, and all your apps would just be constantly
09:56:39 19 spinning. And then if a game needed -- you know, it's a
09:56:43 20 catalog, so we move games in, we take games out. If we wanted
09:56:47 21 to remove a game, there would be a dead app sitting on the
09:56:51 22 phone. And we thought gosh, this is a really an inelegant way
09:56:55 23 for players to experience this.

09:56:58 24 And so we went back with a solution that said okay, we
09:57:01 25 think we know how to do this in a way that we can meet the

09:57:05 1 spirit of Apple's policies with breaking out every game as an
09:57:10 2 individual executable so that there would be the metadata,
09:57:14 3 there would be all the discovery, everything that they were
09:57:16 4 seeking, but we would have a reference app that contained the
09:57:21 5 streaming tech so the streaming tech didn't have to go out
09:57:25 6 into every app, and then we wrote told we triggered another
09:57:28 7 policy that said you can't have dependent apps, and so at that
09:57:33 8 point in time, we didn't see a path forward.

09:57:36 9 **Q.** Just a couple questions about that.

09:57:37 10 You mentioned Roblox.

09:57:39 11 **A.** Uh-huh.

09:57:40 12 **Q.** Is that available natively on iOS?

09:57:43 13 **A.** Yes.

09:57:43 14 **Q.** And can you explain what you mean when you say it has
09:57:46 15 games within that game?

09:57:47 16 **A.** There are --

09:57:49 17 **MR. SRINIVASAN:** Objection. Foundation.

09:57:55 18 **THE COURT:** Is it a game that -- well, lay some
09:57:59 19 foundation.

09:57:59 20 Sustained.

09:58:00 21 **BY MR. EARNHARDT:**

09:58:01 22 **Q.** Have you seen Roblox played?

09:58:03 23 **A.** I have.

09:58:04 24 **Q.** Have you played it?

09:58:05 25 **A.** I have.

09:58:05 1 **Q.** Can you explain what you mean when you say Roblox has
09:58:08 2 games within a game?

09:58:09 3 **A.** I can. Roblox is a publisher who makes a single game
09:58:15 4 called Roblox, but there is a community of creators who build
09:58:20 5 micro versions of that game that exist as individual games
09:58:24 6 within that container, and that all sits in the same app and
09:58:29 7 sits natively on the app store.

09:58:31 8 **Q.** Another question about your conversations with Apple.

09:58:33 9 Did you have conversations as to how Microsoft would --
09:58:40 10 would pay Apple for commissions that it would earn in your
09:58:45 11 app?

09:58:47 12 **A.** We were very open to finding a way. There was a technical
09:58:52 13 challenge in -- you think about a game catalog, right, where
09:58:58 14 you have lots of these game titles. We've negotiated the
09:59:00 15 rates already with third-party publishers to be in that
09:59:04 16 catalog. Each of those games, in order to plumb into Apple's
09:59:12 17 in-app purchase system, you would have to go back and rewrite
09:59:16 18 all the connection links any time something was to be
09:59:19 19 purchased, so it would require us to go back to all of our
09:59:22 20 game developers and ask them to rewrite these links, and so
09:59:28 21 with Apple, we weren't seeking to negotiate the rev share
09:59:37 22 percent. We were seeking a way that we could not have to
09:59:40 23 rewrite all of these links and give some sort of aggregate way
09:59:44 24 in order to pay the store commissions.

09:59:47 25 **Q.** Let me show you one more document. If you can turn to

09:59:50 1 Exhibit PX2311 in your binder. If you can just take a minute
10:00:04 2 to flip through that, and let me know when you have had a
10:00:08 3 chance to familiarize yourself with it. You may want to stop
10:00:11 4 at the back and move forward because that's how it happens
10:00:13 5 chronologically.

10:00:14 6 **A.** I see, 2311.1. That one?

10:00:20 7 **Q.** It starts at 2311.1 and then it has several pages behind
10:00:25 8 it.

10:00:26 9 **A.** Right.

10:00:26 10 **Q.** Do you recognize that document?

10:00:27 11 **A.** Yes, I do.

10:00:28 12 **Q.** What is it?

10:00:30 13 **A.** It is on the first page -- it's an email correspondence
10:00:34 14 between myself and the Developer Relations Team at Apple.

10:00:41 15 **Q.** And the date at the top is April 3rd, 2020?

10:00:45 16 **A.** That's correct.

10:00:46 17 **MR. EARNHARDT:** Your Honor, I would move PX2311 into
10:00:49 18 evidence.

10:00:50 19 **THE COURT:** Any objection?

10:00:50 20 **MR. SRINIVASAN:** No objection, Your Honor.

10:00:52 21 **THE COURT:** Admitted.

10:00:52 22 (Plaintiff's Exhibit 2311 received in evidence)

10:00:53 23 **BY MR. EARNHARDT:**

10:00:53 24 **Q.** If you could turn to the bottom of page PX2311.10.

10:01:03 25 **A.** I have 2311.1. Is that it?

10:44:48 1 **MR. SRINIVASAN:** We will give you the transcripts.

10:44:50 2 **THE COURT:** I have the transcripts. Page and line
10:44:52 3 number is what I'm looking for.

10:44:54 4 **MR. SRINIVASAN:** So it's page 80, line 16 to 23.

10:44:57 5 **THE COURT:** Hold on.

10:45:05 6 **MR. CHIAPPETTA:** Your Honor, if I may be heard?

10:45:11 7 **THE COURT:** Page 80, line 16 to 23. And was this a
10:45:17 8 30(b)(6) deposition?

10:45:20 9 **MR. SRINIVASAN:** This was in her individual capacity
10:45:22 10 as she is here today, Your Honor.

10:45:24 11 **THE COURT:** Okay.

10:45:25 12 **MR. CHIAPPETTA:** Your Honor, this entire deposition
10:45:26 13 transcript is under seal, Attorneys' Eyes Only, or designated
10:45:30 14 as Attorneys' Eyes Only currently, and so I would just -- to
10:45:33 15 the extent that counsel intends to ask questions, I would ask
10:45:36 16 that those be previewed first.

10:45:42 17 **THE COURT:** Hold on. So do you know what the lines
10:46:01 18 are that he's talking about?

10:46:03 19 **MR. CHIAPPETTA:** Unfortunately I haven't had time to
10:46:04 20 bring it up yet because I had to run up here.

10:46:07 21 **THE COURT:** Go ahead.

10:46:09 22 **MR. SRINIVASAN:** Your Honor, on this issue, we
10:46:10 23 understand that that presumptive designation is only through
10:46:13 24 the protective order before trial and -- sorry.

10:46:16 25 **THE COURT:** Now I've read it. So what would you --

10:49:35 1 it. I don't know what his statements are.

10:49:37 2 **Q.** You're not aware whether the general nature of those
10:49:38 3 statements are criticisms or not?

10:49:41 4 **A.** Well, I assume they're not favorable, but I don't know
10:49:44 5 what the direct criticisms that Brad is making are.

10:49:47 6 **Q.** Why do you assume they're not favorable?

10:49:50 7 **A.** Because of our experience in trying to get an application
10:49:52 8 into the App Store.

10:49:52 9 **Q.** Is it your testimony that Mr. Smith's -- the focus of his
10:49:56 10 criticisms relate to the xCloud streaming service and that's
10:49:59 11 it?

10:50:00 12 **A.** Again, I don't know what Brad's statements are.

10:50:03 13 **Q.** Okay. Do you recall -- switching gears, do you recall
10:50:08 14 that in advance of your deposition, you had an understanding
10:50:12 15 of what topics you would be discussing; correct?

10:50:19 16 **MR. CHIAPPETTA:** Your Honor, objection to the extent
10:50:20 17 the question calls for attorney-client communications.

10:50:23 18 **THE COURT:** Overruled. You were -- was a subpoena
10:50:27 19 issued?

10:50:27 20 **THE WITNESS:** A subpoena was issued, yes.

10:50:30 21 **THE COURT:** Did you read the subpoena?

10:50:31 22 **THE WITNESS:** It was sent to me. I looked at it.

10:50:34 23 Yes.

10:50:34 24 **THE COURT:** Okay. Answer the question.

10:50:36 25 **MR. CHIAPPETTA:** Your Honor, for clarification, the

subpoena did not have any topics since she is not a 30(b)(6) deponent.

THE COURT: I don't need you to testify. She can answer the question to the extent that she knows. If she has had conversations with counsel, then she can testify to that, too.

If you -- if you and your attorney had private conversations, that I'm not interested in --

THE WITNESS: Yes. I have had no conversations with Epic counsel. I know there were a set of things that they showed me in the deposition that said "you're going to testify to these topics," and then I saw somewhere, I cannot recall where, where those topics changed coming into today.

BY MR. SRINIVASAN:

Q. In fact, you prepared for the deposition over the course of two days; right?

A. We, on two separate days -- we had preparation sessions of different lengths of time.

Q. I think you had at least seven lawyers from Microsoft to help prepare you in that deposition; correct?

A. There were multiple lawyers present in that because there were the -- our internal legal counsel as well as outside counsel.

Q. So I think it was at least seven, though?

A. I can try and count, if that's helpful.

10:51:55 1 **Q.** No. That's okay.

10:51:55 2 And you prepared for your deposition by searching your
10:51:58 3 personal files over issues that you thought you might be asked
10:52:01 4 about; right?

10:52:02 5 **A.** Yes. As I said in my deposition, I went back and searched
10:52:05 6 for the sequence on the xCloud conversations to refresh my
10:52:09 7 memory.

10:52:10 8 **Q.** And in fact that's right, you testified that you in fact
10:52:13 9 looked specifically to refresh your memory on certain topics;
10:52:16 10 correct?

10:52:17 11 **A.** Correct.

10:52:18 12 **Q.** And you in fact have documents in your files about the
10:52:21 13 xCloud streaming service, the Xbox video game console, and
10:52:26 14 other operations related to those businesses; correct?

10:52:29 15 **A.** I'm sorry. Is the question do I have emails on those
10:52:32 16 topics? Yes, of course.

10:52:35 17 **Q.** Emails, PowerPoints, anything else, documents; correct?

10:52:39 18 **A.** On our Xbox business, yes, of course.

10:52:41 19 **Q.** And in fact, you also testified that among the Xbox
10:52:46 20 business documents you have, you have were -- are P&L
10:52:50 21 statements specific to Xbox; correct?

10:52:53 22 **A.** That's correct, yes.

10:52:54 23 **Q.** And you also have documents in your files relating to your
10:52:58 24 interactions with Apple; correct?

10:53:00 25 **A.** The same ones that Apple has, yes.

10:53:03 1 **Q.** But you also said you had some internal documents. Don't
10:53:06 2 you also have internal Microsoft documents relating to your
10:53:09 3 dealings with Apple on the streaming business?

10:53:12 4 **A.** Sure. There is emails on -- on the correspondence. Most
10:53:17 5 of it culminated in what we shared with Apple, yes.

10:53:21 6 **Q.** I think you said you even have notes taken by your team at
10:53:24 7 Microsoft regarding at least one meeting you had with Apple.
10:53:27 8 That was shared with you; correct?

10:53:29 9 **A.** There was an email, I believe, that summarized our meeting
10:53:34 10 in Cupertino the first time.

10:53:37 11 **Q.** And in fact those kind of notes -- nobody at Apple would
10:53:40 12 have those notes. Those are internal to Microsoft; right?

10:53:43 13 **A.** They would reflect the -- it truly was a sequence of the
10:53:46 14 conversation that Apple was part of, yes.

10:53:48 15 **Q.** Okay. And you didn't produce any of these documents in
10:53:51 16 advance of your deposition, did you, ma'am?

10:53:54 17 **A.** I don't know what was produced.

10:53:55 18 **Q.** Okay. Well, did you provide the documents to anybody?

10:53:58 19 **A.** Did I provide them? No -- ah, no.

10:54:01 20 **Q.** Nobody even asked you for them; correct?

10:54:03 21 **A.** No.

10:54:03 22 **Q.** Okay. And you also said you might have -- you also have
10:54:07 23 files potentially regarding communications you have had with
10:54:10 24 Epic; right?

10:54:11 25 **A.** I have not had communications with Epic. Personally it's

10:54:15 1 not part of my job responsibility.

10:54:17 2 **Q.** The question was whether you have any documents, not
10:54:19 3 necessarily communications from you, but communications with
10:54:23 4 Epic from anybody at Microsoft?

10:54:26 5 **A.** I don't know that to be true.

10:54:27 6 **Q.** Okay. But you didn't look for those?

10:54:29 7 **A.** I did not.

10:54:30 8 **Q.** Okay. And who is Phil Spencer?

10:54:36 9 **A.** Phil is the Executive Vice-President of Gaming at
10:54:39 10 Microsoft.

10:54:39 11 **Q.** And you have spoken -- you have had at least one
10:54:42 12 conversation with Mr. Spencer about a conversation he had with
10:54:45 13 Mr. Sweeney about Apple's App Store; correct?

10:54:50 14 **A.** I did not have a conversation with Phil about that, no. I
10:54:54 15 remember I think the question was asked in the deposition on
10:54:58 16 do I recall any conversations, and I said while I don't have
10:55:04 17 direct knowledge or email on it, I remember at one point in
10:55:09 18 some forum Phil mentioning he had gotten a note from
10:55:13 19 Mr. Sweeney.

10:55:13 20 **Q.** So you had some communication with Mr. Spencer on it;
10:55:16 21 correct?

10:55:17 22 **A.** I was involved in a forum where Mr. Spencer had mentioned
10:55:20 23 it.

10:55:21 24 **Q.** Okay. And did you look for any emails regarding that
10:55:24 25 interaction with -- between Mr. Spencer and Mr. Sweeney?

10:55:28 1 A. No.

10:55:29 2 Q. And again nobody asked you to look for those, did they?

10:55:31 3 A. They did not.

10:55:32 4 Q. You didn't produce any of these documents since your
10:55:34 5 deposition; right?

10:55:35 6 A. I did not.

10:55:35 7 Q. Okay. And are you aware that the Court urged Microsoft to
10:55:40 8 produce to Apple documents regarding the subject of your
10:55:42 9 testimony in advance of your deposition?

10:55:45 10 A. No, I'm not aware of that.

10:55:46 11 Q. Nobody told you?

10:55:47 12 A. No.

10:55:48 13 Q. Okay. And are you aware that specifically the Court said
10:55:51 14 that, quote, "the failure to produce relevant documents,
10:55:54 15 including documents relevant to the individual testifying
10:55:57 16 witness, to both parties, here to Apple, will be factored into
10:56:03 17 the individual witness's credibility and, if necessary, may
10:56:07 18 warrant the striking of the testimony." Did anybody tell you
10:56:09 19 that?

10:56:10 20 A. No.

10:56:11 21 Q. Okay. And you're not aware of that -- you didn't
10:56:14 22 otherwise become aware of that issue?

10:56:16 23 A. I did not, no.

10:56:18 24 Q. And are you aware that the Court said to the extent that
10:56:21 25 the third-party witnesses are concerned with an adverse

credibility determination at the bench trial, they should ensure that they adequately and timely produce such documents in advance of their deposition. Was that ever conveyed to you?

A. I'm sorry. What was the question?

Q. The question is whether you understood that the Court said the following: "To the extent that the third-party witnesses are concerned with an adverse credibility determination at the bench trial, they should ensure that they adequately and timely produce such documents in advance of their deposition." Did you ever come to understand that the Court had made that request?

A. No. I am not aware of that.

Q. Would you have produced your documents had you known that?

A. Probably not because I don't -- I did not come into this feeling like my credibility would be questioned.

Q. Okay. Well, I'm saying to you now that the Court has said that that's an issue, now that you have learned that, would you have done something differently?

A. I don't know. Honestly, I haven't thought enough about it. It seems like something that I would have to take time and think about.

Q. Okay. Fair enough.

Okay. Let's move on. You aware, ma'am, that Apple has App Store guidelines; correct?

10:57:36 1 A. I am.

10:57:37 2 Q. And part of your role at Microsoft is to know that the
10:57:40 3 Apple App Store -- what the rules are and understand how the
10:57:44 4 app review process goes; right?

10:57:46 5 A. That's correct.

10:57:46 6 Q. And you know that any app that seeks to be on the App
10:57:49 7 Store must comply with the App Store guidelines; right, ma'am?

10:57:53 8 A. Yes.

10:57:54 9 Q. And at some point, you approached Apple about getting
10:57:58 10 Microsoft's Cloud gaming streaming service on the App Store;
10:58:01 11 right? You just testified about that this morning?

10:58:03 12 A. Right. That's correct.

10:58:05 13 Q. You made an initial request of Apple. You talked about
10:58:07 14 that; correct? That happened.

10:58:09 15 And when you submitted that first proposal to Apple, Apple
10:58:13 16 responded that the proposed app violated Apple's app review
10:58:17 17 guidelines; right?

10:58:22 18 A. Yes, but they invited us to a meeting in Cupertino to
10:58:26 19 discuss ways that we could look for ways to solve them.

10:58:34 20 Q. Absolutely. In fact, they engaged you in further
10:58:36 21 conversation; correct?

10:58:37 22 A. Uh-huh.

10:58:38 23 Q. And --

10:58:39 24 THE COURT: That's a "yes"?

10:58:41 25 THE WITNESS: Yes.

10:58:41 1 **BY MR. SRINIVASAN:**

10:58:41 2 **Q.** And, in fact, if you recall, Apple identified three
10:58:44 3 specific reasons for why they object -- why the app was
10:58:48 4 rejected; right?

10:58:49 5 **A.** Can you state the three because I can probably name more
10:58:51 6 than three.

10:58:52 7 **Q.** Sure. But we -- well, let's take them one at a time. You
10:59:05 8 can tell me if there is more.

10:59:07 9 **A.** Okay.

10:59:07 10 **Q.** The first one was that the proposed xCloud app used remote
10:59:11 11 streaming which the App Store guidelines did not permit;
10:59:13 12 right?

10:59:15 13 **A.** That's correct.

10:59:15 14 **Q.** And Apple worked --

10:59:17 15 **A.** I'm sorry. Let me correct that.

10:59:18 16 Prevent for gaming because they do -- they do allow that
10:59:24 17 for all other forms of media and entertainment.

10:59:27 18 **Q.** Right. You mentioned that earlier. If you could just
10:59:29 19 stick to my questions, and you will have a chance to say those
10:59:32 20 things again, perhaps with Epic's counsel.

10:59:34 21 But Apple then worked with you on the remote streaming
10:59:36 22 issue, and eventually they amended their App Store guidelines
10:59:39 23 for everybody to allow streaming services; right?

10:59:47 24 **A.** Yes. That that one particular policy they did amend
10:59:52 25 roughly six or eight months later.

10:59:54 1 Q. Okay. So it was amended?

10:59:56 2 A. Correct.

10:59:56 3 Q. Okay. And then -- by the way, for its part, Microsoft
11:00:01 4 doesn't allow other streaming services on the Xbox Store, does
11:00:05 5 it?

11:00:06 6 A. No. It's a closed ecosystem.

11:00:08 7 Q. So under no circumstances could another streaming service
11:00:10 8 be on the Xbox; is that right?

11:00:15 9 A. Generally available today, no, that's accurate.

11:00:17 10 Q. Whereas with Apple now with the amendment, a streaming
11:00:20 11 service of some type could in fact be put on the App Store;
11:00:23 12 right?

11:00:24 13 A. That being said, to my earlier point, Apple has
11:00:27 14 historically allowed many streaming services on --

11:00:31 15 Q. So that's a "yes," ma'am?

11:00:32 16 A. It's a "yes," that they were changing it to include gaming
11:00:35 17 for the first time.

11:00:37 18 Q. Okay. Good.

11:00:37 19 And then let's go back to the xCloud proposal itself. A
11:00:41 20 second issue that Apple flagged as an App Store guideline
11:00:44 21 violation had to do with Microsoft publishing third-party
11:00:47 22 content; correct?

11:00:48 23 A. That's correct.

11:00:49 24 Q. Right. And Apple solved that issue for Microsoft as well;
11:00:52 25 right?

11:00:53 1 **A.** Yes. They did allow -- they permitted later down our
11:00:58 2 discussions for third-party content to come into a catalog.

11:01:02 3 **Q.** Terrific.

11:01:02 4 And then the third and final issue was that, quote, "the
11:01:05 5 catalog for games would have to be individually separated one
11:01:09 6 by one to comply with the Xbox guideline." That was the third
11:01:13 7 issue; correct?

11:01:15 8 **A.** That was the third issue in the order that you said them.
11:01:18 9 It's the first issue in terms of delivering the service at
11:01:21 10 all.

11:01:22 11 **Q.** And that's the one issue that the two companies couldn't
11:01:24 12 overcome; correct?

11:01:25 13 **A.** That's correct.

11:01:25 14 **Q.** And so you understood very clearly what the reason Apple
11:01:29 15 was telling you for why the streaming service that you were
11:01:32 16 offering wasn't compliant; correct?

11:01:35 17 **A.** We understood that Apple, as you are suggesting, often
11:01:39 18 amends policies as they take in new information and as time
11:01:42 19 progresses and they see what is happening, and this was a case
11:01:46 20 where they amended, too, but they did not amend the primary
11:01:51 21 issue.

11:01:51 22 **Q.** You're not contending here that Apple somehow misapplied
11:01:54 23 its guidelines or treated you unfairly but that they weren't
11:01:59 24 willing to amend this particular guideline for Microsoft;
11:02:01 25 correct?

11:02:04 1 **A.** I won't say for Microsoft. They weren't willing to amend
11:02:07 2 this for any gaming company.

11:02:09 3 **Q.** Sure. For anybody. But that was the sticking point that
11:02:11 4 you had with Apple; correct?

11:02:14 5 **A.** Yes. Which fundamentally breaks down the service we were
11:02:17 6 trying to deliver.

11:02:19 7 **Q.** And would you agree that Apple tried to meet you halfway
11:02:22 8 to fix the problem for Microsoft?

11:02:26 9 **A.** In what sense?

11:02:27 10 **Q.** In terms of trying to work with Microsoft? They amended
11:02:30 11 two out of the three rules; correct?

11:02:32 12 **A.** But they are not relative importance. The first issue --
11:02:36 13 the third issue in your list is the main issue and the other
11:02:39 14 two are relevant if you can't get through the first -- the --
11:02:44 15 the -- being able to give a game catalog.

11:02:47 16 **Q.** Right. And it was in the context of this discussion you
11:02:49 17 had with Apple that you had one of your meetings with Apple
11:02:53 18 folks; correct?

11:02:55 19 **A.** We had several meetings with Apple folks, yes.

11:02:58 20 **Q.** It was in the context of one of those meetings that one of
11:03:00 21 your colleagues took notes of that meeting to understand what
11:03:04 22 occurred in that meeting; correct?

11:03:05 23 **A.** No. The meeting that a colleague took notes in was the
11:03:09 24 very first meeting that took place in Cupertino where there
11:03:13 25 were five or six Apple members present as well as five or six

11:03:16 1 people from Microsoft from Xbox.

11:03:18 2 **Q.** And that meeting was about trying to get xCloud on the
11:03:21 3 service; correct?

11:03:21 4 **A.** Correct.

11:03:22 5 **Q.** Yeah. Okay.

11:03:23 6 And those are the notes that you didn't turn over; right?

11:03:26 7 **A.** But the notes are a recap of the discussion that everyone
11:03:28 8 in that conversation was privy to. They did not contain any
11:03:33 9 other commentary.

11:03:35 10 **Q.** So that's a yes, you didn't turn them over?

11:03:38 11 **A.** It's a yes, I did not supply that email to anyone.

11:03:42 12 **Q.** Right. You didn't send it to Apple either?

11:03:44 13 **A.** I don't know that. It's actually a good question. I
11:03:47 14 haven't gone back to say did that email -- it very likely
11:03:50 15 could have gone to Apple.

11:03:52 16 **Q.** And did you have internal discussions with your colleagues
11:03:54 17 about this whole process?

11:03:56 18 **A.** Oh, sure.

11:03:58 19 **Q.** And at some point, Microsoft switched gears, correct, and
11:04:01 20 you decided to try to bring the streaming service to iPhone
11:04:05 21 users via the web Safari platform; correct?

11:04:10 22 **A.** When we realized that after the attempts that we had made
11:04:14 23 that -- in proposing many different ways to be -- to comply
11:04:20 24 with the spirit of what they were asking us to do, that we
11:04:23 25 could not -- we saw no alternative to reach the iOS mobile

11:04:28 1 base of customers without basically starting over and spending
11:04:33 2 the last year, an entire year of an entire organization to
11:04:38 3 rewrite the technology to be delivered over browser.

11:04:44 4 **Q.** So the answer to my question is yes, you started engaging
11:04:46 5 with Apple to get the service on through the Safari web?

11:04:49 6 **A.** We reached out to get some understanding on WebKit to
11:04:55 7 point out some issues that were not working with our
11:04:57 8 controller in order to enable us to go over browser, that's
11:05:00 9 right.

11:05:00 10 **Q.** Okay. And you in fact -- the Microsoft team and you
11:05:04 11 included enlisted the Apple team's help to get the xCloud
11:05:08 12 server working on Apple Safari browser; right?

11:05:12 13 **A.** I don't know the extent of help. I know that we supplied
11:05:16 14 a list of bugs that we had found and asked for help in fixing
11:05:20 15 the issues to enable it, if that's help.

11:05:24 16 **Q.** Right. In fact, you -- do you recall that it was a wish
11:05:26 17 list of things that you asked for Apple's web browser team to
11:05:30 18 work with you on to get the xCloud app to work through the
11:05:35 19 Safari browser?

11:05:36 20 **A.** Yes. But we would have needed none of that if we had just
11:05:40 21 built a native app for the App Store, so based off their
11:05:44 22 direction to go build for browser, we had to start over, and
11:05:49 23 there were material bugs that we needed help to work through
11:05:53 24 in order for that to be possible.

11:05:54 25 **Q.** So my question was did you provide them a wish list to

12:01:51 1 **Q.** What percentage of users actually -- withdraw.

12:01:55 2 What percentage of iOS users actually play video games on
12:02:00 3 a browser?

12:02:01 4 **MR. SRINIVASAN:** Objection. Foundation.

12:02:02 5 **THE COURT:** Sustained.

12:02:03 6 **BY MR. EARNHARDT:**

12:02:04 7 **Q.** Have you seen data that calculates the percentage of iOS
12:02:10 8 users that play video games through a browser?

12:02:16 9 **A.** I have seen data that says that --

12:02:18 10 **THE COURT:** Hold on.

12:02:20 11 **THE WITNESS:** Yes, ma'am.

12:02:21 12 **THE COURT:** The question was have you seen data, so
12:02:23 13 the answer is "yes"?

12:02:25 14 **THE WITNESS:** The answer is yes, but it's not data.
12:02:27 15 It's a conclusive point that says people don't play video
12:02:29 16 games on browser. They play over browser on PC.

12:02:33 17 **THE COURT:** And were those documents produced in this
12:02:35 18 litigation?

12:02:37 19 **THE WITNESS:** It potentially is in the profit
12:02:41 20 segment, but I'm not entirely certain.

12:02:43 21 **BY MR. EARNHARDT:**

12:02:43 22 **Q.** Let me ask you some questions about that.

12:02:47 23 Ms. Wright, do you have any knowledge whatsoever regarding
12:02:50 24 what conversations took place between your lawyers at
12:02:54 25 Microsoft and Apple's lawyers regarding what the scope of the

12:02:57 1 Microsoft production would be?

12:02:59 2 **A.** No, I do not.

12:03:00 3 **Q.** Do you have any knowledge what conversations took place
12:03:03 4 between Epic's lawyers and Microsoft's lawyers regarding what
12:03:07 5 the scope of the Microsoft production would be?

12:03:09 6 **A.** I do not.

12:03:10 7 **Q.** Do you know whether Microsoft gave Epic exactly the same
12:03:15 8 documents that Microsoft gave Apple?

12:03:18 9 **A.** I have no idea.

12:03:19 10 **Q.** Is it possible that someone may have searched your files
12:03:22 11 at Microsoft without knowing it?

12:03:24 12 **A.** Sure.

12:03:27 13 **Q.** Your IT department has access to your emails?

12:03:29 14 **A.** All of them, yes.

12:03:31 15 **Q.** Your IT department has access to the PowerPoints that you
12:03:37 16 serve on your share drive?

12:03:38 17 **A.** Yes.

12:03:39 18 **Q.** Do you know whether those documents were searched for and
12:03:41 19 produced?

12:03:41 20 **A.** Yes, I do.

12:03:42 21 **Q.** Were they?

12:03:43 22 **A.** Yes. My understanding is that there were documents
12:03:45 23 searched for because they were shown to me, and I did not give
12:03:47 24 them to anyone.

12:03:56 25 **Q.** If you could pull back the black binder that you have,